

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 October 16, 2023

16 2:05 PM

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20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KAREN

1 HEARING re Hybrid Confirmation Hearing

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1 P R O C E E D I N G S

2 CLERK: Okay, good afternoon. Starting the
3 recording for October 16th, 2023, two o'clock hearing.
4 Calling Case No. 22-10964, Celsius Network LLC. For the
5 parties, let's start with the parties in the courtroom. If
6 anyone is speaking on the record, please come to the (audio
7 glitch) appearance for the record.

8 Again, anyone in the courtroom so far? Oh.

9 MR. LATONA: Hi, good afternoon, Deanna. It's Dan
10 Latona of Kirkland & Ellis. Today we'll have T.J. McCarrick
11 and Grace Brier, among others for the Debtors.

12 CLERK: Okay, thank you. All right. Yes, Dimitry
13 on Zoom.

14 MR. KIRSANOV: Good afternoon. Dimitry Kirsanov,
15 pro se creditor. Thank you.

16 CLERK: Thank you. All right, any additional
17 parties that are speaking on the record this morning --
18 sorry, this afternoon, either in the courtroom or on Zoom?
19 All right. I will pause the recording for now. Thank you.

20 (Pause)

21 CLERK: All right, good afternoon. For the
22 parties in the courtroom, if anyone is speaking on (audio
23 glitch) this afternoon and would like to state their
24 appearance, please come to the middle podium to do so.

25 WOMAN: You're not making an appearance? But

1 Deanna's taking it for the recording.

2 CLERK: They could come back and give it, as long
3 as -- yeah, go ahead.

4 MR. SABIN: Deanna. Deanna, hi, it's Jeff Sabin.
5 I'm from Venable LLP for Ignat Tuganov. Thank you.

6 CLERK: Okay, thank you. For the parties on Zoom,
7 if anyone is speaking on the record, please use the raise
8 hand function. I will ask you to state your appearance.
9 Mr. Schneider.

10 MR. SCHNEIDER: David Schneider, pro se creditor.

11 CLERK: Thank you. Mr. Bernstein.

12 MR. BERNSTEIN: Good afternoon. Just in case,
13 Jeffery Bernstein, McElroy, Deutsch, Mulvaney & Carpenter
14 for the New Jersey Bureau of Securities.

15 CLERK: Thank you. Mr. Phillips.

16 MR. PHILLIPS: Richard Phillips, pro se.

17 CLERK: Okay, thank you. All right, are there any
18 additional parties at this time that are speaking on the
19 record and have not put in their appearance? If not, I'll
20 pause the recording for now. Okay.

21 (Pause)

22 CLERK: All right. Good afternoon. For the
23 parties in the courtroom, if anyone is speaking on the
24 record, please come to the middle podium and state your
25 appearance.

1 WOMAN: Just give Deanna your appearance.

2 MR. COLODNY: For White & Case LLP on behalf of
3 the Official Committee of Unsecured Creditors, Aaron
4 Colodny, Keith Wofford, and Joshua Weedman.

5 CLERK: Okay, thank you. Are there any additional
6 parties in the courtroom that have stated their appearance
7 on the record? If so, please come to the middle podium to
8 give your appearance.

9 MR. BRUH: Deanna, Mark Bruh for the United States
10 Trustee.

11 CLERK: All right, thank you. Are there any
12 parties on Zoom that have not stated their appearance for
13 the record? If so, please use the raise hand function. Ms.
14 Cornell?

15 MS. CORNELL: Morning. Shara Cornell for the
16 Office of the United States Trustee. Thank you.

17 CLERK: Thank you. All right. Victor?

18 MR. UBIERNA DE LAS HERAS: Good morning, Deanna.
19 Victor Ubierna de las Heras, pro se creditor.

20 CLERK: All right, thank you. All right, any
21 additional parties in the courtroom or on Zoom?

22 All right. Again, for the parties that have
23 joined, if anyone is speaking on the record this afternoon
24 and has not given their appearance yet and would like to
25 make their appearance, if you are on Zoom, please use the

1 raised hand function to do so. Mr. Davis.

2 MR. DAVIS: Otis Davis. I'm not sure I'll be
3 speaking, but I just want to note my appearance. Pro se
4 creditor.

5 CLERK: Thank you. All right, Jason?

6 MR. IOVINE: Yes, Jason Iovine, pro se creditor.
7 I don't know if I'm going to speak, just notifying.

8 CLERK: Okay, thank you. All right, again, any
9 additional parties that are speaking on the record this
10 afternoon and have not given their appearance yet? All
11 right, I'll pause the recording for now.

12 (Pause)

13 CLERK: All right. Again this after -- good
14 afternoon. For the parties that are in the courtroom, if
15 anyone is speaking on the record, please come to the middle
16 --

17 MR. McCARRICK: T.J. McCarrick, Kirkland & Ellis.
18 Oh, you already got it? Never mind.

19 WOMAN: Okay, you're going to have to
20 (indiscernible) appearance. So you go to the podium
21 (indiscernible). Right there. Yep.

22 MR. MAZA: Right now, I should make --

23 WOMAN: Yeah, she's on. Deanna, someone making an
24 appearance. Go ahead.

25 MR. MAZA: Alan Maza from the SEC and I have on

1 Zoom also my colleagues Therese Scheuer and William
2 Uptegrove.

3 CLERK: All right, thank you, sir. Are there any
4 additional parties in the courtroom? This is the final call
5 for appearances. All right. Are there any parties on Zoom
6 that are speaking on the record this afternoon and have not
7 stated their appearance yet? If so, please use the raise
8 hand function in Zoom. Mr. Frishberg.

9 MR. FRISHBERG: Hi, Danial Frishberg, pro se. I
10 don't plan on speaking (audio glitch).

11 CLERK: Okay, thank you. Johan.

12 MR. BRONGE: Yes, hello. Johan Bronge, pro se
13 creditor, and I may speak.

14 CLERK: Okay, thank you. Yeah, Mr. Bernstein, did
15 you have a question?

16 MR. BERNSTEIN: No, sorry --

17 CLERK: Okay.

18 All right, are we waiting for any additional
19 parties or can we start promptly at two?

20 MR. COLODNY: Hi, Deanna. This is Aaron Colodny
21 from White & Case. I believe we are ready to begin.

22 CLERK: All right, thank you.

23 All right, if everyone could please pay attention
24 to the following announcement. All persons are strictly
25 prohibited from making any recording of Court proceedings,

1 whether by video, audio, screenshot, or otherwise.
2 Violation of this prohibition may result in the imposition
3 of monetary and nonmonetary sanctions. The clerk of the
4 court maintains an audio recording of all proceedings which
5 constitutes the official record.

6 Parties must state their name each time they speak
7 on the Court record. Party must join with the full first
8 and last name to be admitted from the waiting room. Parties
9 that join with initials, a partial name, a designation such
10 as iPhone, et cetera, will not be admitted. Also the phone
11 number that you sign up for your e-Court appearance needs to
12 be the same number that you use to log in.

13 Also, please keep in mind that you should mute all
14 your cell phone and devices so they do not interfere with
15 the recording. Thank you.

16 MR. ABREU: Sorry Deanna, can you hear me?

17 CLERK: Yes, Mr. Abreu.

18 MR. ABREU: Just to state that I might speak as
19 well.

20 CLERK: Okay.

21 MR. ABREU: Pro se creditor.

22 CLERK: Okay, Artur Abreu, your appearance is
23 noted. Thank you.

24 CLERK: All rise.

25 THE COURT: All right, please be seated. Good

1 afternoon, everyone. I'm sure you all had busy weeks even
2 though we weren't in the courtroom last week. Let me just
3 cover just a few preliminaries. So we're going to pick up,
4 I know for sure, with the objections today.

5 I inadvertently -- so there was an order that was
6 entered on October 13th and had the list, the order in which
7 I would hear objectors. I inadvertently omitted Dmitry
8 Kirsanov, and I think it was because he had actually filed
9 the objection before and I hadn't seen it. So I'm going to
10 include him after number six, Koala 2 LLC. We'll give Mr.
11 Kirsanov an opportunity to speak then.

12 So I also am aware that the Committee has
13 objected to the new proposed expert report and this really
14 goes -- I know there are also objections to some of the pro
15 se creditors as well. I'm going to reserve ruling on
16 whether or not the proposed expert report is or is not
17 admissible. I'm going to hear, and this is really going to
18 go with respect to some of the pro se creditors who are
19 going to speak as well.

20 If you have an objection, you should assert it,
21 but I will listen to the testimony and will decide after
22 whether or not to sustain objections or not. But I'm going
23 to give people an opportunity to have their say. Okay?

24 So with that, let me ask first from the Debtor,
25 anything that I need to cover preliminarily before we get

1 started?

2 MR. McCARRICK: Thank you, Your Honor. T.J.

3 McCarrick, Kirkland & Ellis, on behalf of the Debtors. Just
4 as a process point, we understand Your Honor entered the
5 October 13th order identifying the order in which you would
6 hear argument and testimony, depending upon whether or not
7 folks submitted testimony.

8 The only -- it's a wee proposal that I would
9 offer for Your Honor's consideration, is whether it would
10 make sense to have the folks who are going to be giving a
11 statement but not evidence or testimony go sequentially and
12 then pick up with the evidence. I'm happy to do it anyway
13 Your Honor --

14 THE COURT: Mr. McCarrick, at this stage, I don't
15 have clearly in mind --

16 MR. McCARRICK: That's perfectly fine.

17 THE COURT: I thought it would -- it was going to
18 be easier if I had an order, so we don't have five people
19 trying to interject at the same time, not there was anything
20 wrong with it, but it's just difficult with (audio glitch)
21 on Zoom. Okay. And the other thing I raise is about remote
22 testimony and I tried to make clear the Federal Rules, Rule
23 43(a) has a rule that essentially requires compelling
24 circumstances in order for me to permit remote testimony.

25 The case law is not particularly well developed on

1 this area. As I understand it, where no objections have
2 been raised to remote testimony, Courts have more often than
3 not permitted the remote testimony. I think, you know, for
4 example, where there are pro se creditors outside the United
5 States or in California, I'll leave it to the U.S. Trustee,
6 the Committee, and the Debtors to see whether there are
7 objections to that person testifying remotely or not.

8 Obviously, there'll be cross examination by Zoom.
9 But Rule 43(a) creates a pretty strong presumption that the
10 testimony is supposed to be in the courtroom. Until
11 September 21st, the Bankruptcy Courts had much greater
12 flexibility about it. After the judicial conference imposed
13 new limitations on remote hearings, it got a little -- it
14 got tighter.

15 So I'm not telling anybody whether to object,
16 don't object, or whatever. I think, you know, we don't have
17 juries. Frankly, I think the remote testimony for the most
18 part has gone pretty well, but we'll deal with it as the
19 individuals arise.

20 So as much -- we came up with the order because I
21 just wanted people to know you're next online, you're next
22 online.

23 MR. McCARRICK: Understood, Your Honor, and we're
24 happy to proceed that way.

25 THE COURT: Okay. Thanks very much, Mr.

1 McCarrick. All right, anything from the Committee before we
2 start?

3 MR. COLODNY: No, Your Honor.

4 THE COURT: Okay. All right --

5 MR. KIRSANOV: Your Honor, (audio glitch), pro se
6 creditor.

7 THE COURT: Yes.

8 MR. KIRSANOV: I wasn't aware that I would be
9 number six today. May I ask the Court --

10 THE COURT: You're going to be number seven today,
11 Mr. Kirsanov.

12 MR. KIRSANOV: I understand. Thank you, Your
13 Honor. May I ask permission to go last on the list, so
14 prepare?

15 THE COURT: All right, so right now, I will do
16 that. I didn't want you to feel that somehow you've been
17 slighted and not put on the list and it was my oversight
18 that kept you from going on. With your permission, you'll
19 be number 23 after Cathy Lau.

20 MR. KIRSANOV: Thank you --

21 THE COURT: Is that all right?

22 MR. KIRSANOV: Yes, thank you.

23 THE COURT: Okay. I slotted you up because I
24 didn't -- you've spoken before. I didn't want you to feel
25 that I'd left you off and then didn't consider you.

1 MR. KIRSANOV: I appreciate that sincerely, Your
2 Honor. Thank you.

3 THE COURT: All right. So you're going to be on
4 the list for number 23. All right?

5 So let's start with the U.S. Trustee. Mr. Bruh?

6 MR. BRUH: Thank you, Your Honor. For the record,
7 Mark Bruh for the United States Trustee. We will not be
8 presenting, Your Honor, so that will be quick.

9 THE COURT: Okay.

10 MR. BRUH: We'll just reserve for closing in the
11 case.

12 THE COURT: Well, let me ask you. I asked the
13 Debtor, the Committee, and the U.S. Trustee to confer about
14 the Consumer Privacy ombudsman and is -- has there been a
15 resolution reached on that? I see Ms. Cornell shaking her
16 head, but somebody tell me where we stand on that because
17 she's not on the list.

18 MR. KOENIG: Good afternoon, Your Honor. Chris
19 Koenig, Kirkland & Ellis, for the Debtors. We've been in
20 conversations with her. We're very close on a resolution of
21 language that would go in a confirmation order. I don't
22 know whether she intends to testify or not. If we reach a
23 resolution, maybe her testimony is no longer needed. We've
24 discussed it with her.

25 THE COURT: Okay. And I guess the point, first

1 off, she's not lawyer, I take it. Her statement wasn't
2 under oath.

3 MR. KOENIG: Right.

4 THE COURT: I went out of my way and this last
5 thing is to put what the two subsections of 1746 are about
6 what it has to say. Hopefully, you'll be able to work out a
7 resolution. If she wishes to put the testimony in, point
8 out to her the affirmation that it has to have.

9 MR. KOENIG: We have.

10 THE COURT: And it may be that you're not going to
11 want -- if you reached a resolution her testimony
12 (indiscernible) but there won't be cross examination.

13 MR. KOENIG: Yes.

14 THE COURT: Okay. The argument --

15 MS. CORNELL: Your Honor --

16 THE COURT: Just a second. The arguments for her
17 not having to come up from Washington are weaker than
18 somebody who's out of the country. Go ahead, Ms. Cornell.

19 MS. CORNELL: Your Honor, Shara Cornell again for
20 the Office of the United States Trustee. I just wanted to
21 clarify for the record that Ms. Thompson is, in fact, an
22 attorney.

23 THE COURT: She is. Well --

24 MS. CORNELL: Yes, sir.

25 THE COURT: Then she ought to know what you have

1 to do to say something under oath, but in any event. See if
2 you can work it out. It may be that she doesn't care about
3 the testimony going in, if you've reached a resolution.
4 Leave that to you to work out.

5 MR. KOENIG: Right. I don't want to speak for
6 her. I suspect that that will likely be the case, but we'll
7 continue --

8 THE COURT: All right.

9 MR. KOENIG: -- with her.

10 THE COURT: That's fine.

11 MR. KOENIG: Thanks, Your Honor.

12 THE COURT: Okay. All right. The SEC. Anybody
13 from the SEC wish to make a statement? I think they had a
14 reservation of rights. Is anybody from the SEC on Zoom?

15 MS. SCHEUER: Yes, good afternoon, Your Honor.
16 Therese Scheuer for the U.S. Securities and Exchange
17 Commission.

18 THE COURT: Yes.

19 MS. SCHEUER: With me on the line is William
20 Uptegrove and in the courtroom is Alan Maza from the U.S.
21 Securities and Exchange Commission.

22 THE COURT: Okay.

23 MS. SCHEUER: Your Honor, the SEC filed a limited
24 objection and a reservation of rights at Docket 3522. Based
25 on representations by Debtors' counsel, I anticipate the

1 Debtors will incorporate changes to respond to the issues
2 raised in our informal comments and limited objections, and
3 we're review any proposed modifications.

4 Your Honor, the SEC does not have an evidentiary
5 presentation for today, but if Your Honor will permit, I
6 would like to clarify a few points for the record.

7 THE COURT: Please go ahead.

8 MS. SCHEUER: Thank you, Your Honor. Certain
9 statements have been made about the SEC's District Court
10 action and our position in the case during the course of
11 these hearings, as including in Mr. Davis' filed statement
12 at Docket 3769, and similar statements may be made again.

13 Your Honor, regarding the District Court action,
14 we would respectfully refer the Court to the SEC complaint
15 for an accurate statement of the SEC's position in that
16 case, which was filed at Docket 3293. In addition, I wanted
17 to clarify for the record that we're not asking for this
18 Court to rule on whether CEL and Earn are securities, as
19 that is an issue for the District Court, nor are we taking
20 any position as to whether any claim should be subordinated.

21 Your Honor, determining the priority of these
22 claims may turn on whether these programs are debt or equity
23 instruments and not necessarily on whether they're
24 securities. To the extent the Court may have to make
25 certain findings about whether something is a security, we'd

1 reiterate our request that such a ruling be limited to the
2 bankruptcy case and without conclusive effect on the SEC
3 outside of this case.

4 I'm happy to walk the Court through the factual
5 allegations about CEL and Earn and the commission's
6 complaint if that would be helpful to Your Honor.

7 THE COURT: I -- what I'm going to say now, I've
8 said on the record before and that is -- and while I've
9 certainly reached no final conclusion about it, it seemed to
10 me that it was unlikely that I would have to decide the
11 issue of whether either the Earn or the CEL token was a
12 security in the case of Celsius. What the Court is faced
13 with is a proposed plan which, with a couple of exceptions,
14 has been overwhelmingly accepted by classes that proposes
15 plan treatment for the CEL token and obviously for Earn
16 account holders.

17 The issue may well be, then, whether dissenting
18 members of accepting classes are receiving at least as much
19 as they would in a Chapter 7 liquidation. If they are, it
20 seemed likely to the Court that the plan could be confirmed.
21 May be other objections the Court has to deal with, and the
22 Court would be able to do that without having to take a
23 position on whether either Earn or the CEL token was a
24 security.

25 From the Court's standpoint, I usually try not to

1 decide more than I have to decide. And so, it seemed to me
2 -- I'm not foreclosing entirely the possibility, but it did
3 not seem to me that the issues for confirmation in this case
4 were going to require the Court to reach that determination.
5 Obviously, if I did, it's not binding on any District Court
6 or any, you know, or any other Court.

7 So, I mean that -- you know, you're -- the SEC is
8 free to take whatever position it's going to take elsewhere
9 or in this Court. But that's -- I've said this. You were
10 that prior hearing we had. Not everybody was a party to
11 that -- that that was the Court's thinking. We'll see.
12 Okay? I don't know what to say more than that. I can't
13 give you more comfort than that.

14 I understand the SEC's position. I know these are
15 difficult issues. I commented before that I think Judge
16 Torres and Judge Rakoff have somewhat different views of the
17 analysis and conclusions. Obviously, they had two different
18 cases. But I'm aware of that and I don't -- I'm not looking
19 for the opportunity to jump into the fray of the differences
20 between those two judges and maybe others. Okay?

21 MS. SCHEUER: Thank you, Your Honor.

22 THE COURT: I think with respect -- again and
23 understand, I'm not asking you to waive whatever limited
24 objections you have. I'll make no secret of it. I was
25 quite concerned with the events during the Voyager case with

1 respect to what certainly appeared to me to be late
2 objections by securities regulators. It torpedoed one
3 confirmed plan. I think throughout this case, I have
4 encouraged the Debtors and the Committee multiple times to
5 make sure they were conferring with the regulators, state
6 and federal securities regulators, CFTC, et cetera.

7 I think -- obviously, I was not privy to those
8 conversations, but there were from time to time reports that
9 those were ongoing and I was glad to hear that. Obviously,
10 the plan structure in Celsius is not the same as it was in
11 Voyager. I think that that doesn't -- you know, still -- if
12 the plan is confirmed, which is far from being the case at
13 this point, the plan sponsor would still have to get SEC
14 approval and registration for what they're attempting and
15 I'm not -- that's not today -- that's not the issue for the
16 Court at this point.

17 I don't know whether that -- so yes, I've been
18 quite sensitive to the issues of the regulators. They've
19 been important throughout this case and to the extent that
20 their views could be taken into account and orders adjusted
21 accordingly to avoid those issues, that's helpful. Anything
22 else you wish to add?

23 MS. SCHEUER: No. Thank you, Your Honor.

24 THE COURT: All right. Okay. The New Jersey
25 Bureau of Securities.

1 MR. BERNSTEIN: Good afternoon, Your Honor.
2 Jeffrey Bernstein, McElroy, Deutsch, Mulvaney & Carpenter
3 for the New Jersey Bureau of Securities.

4 THE COURT: Nice to see you, Mr. Bernstein.

5 MR. BERNSTEIN: Thank you, Your Honor. Your
6 Honor, the New Jersey Bureau of Securities filed a
7 reservation of rights at Docket 3524 and that was prior to
8 the Debtor filing at Docket 3526 a resolution of plan
9 language with the state. Accordingly, I had notified the
10 Debtor earlier today that we no longer intended to make any
11 presentation to the Court today on any issues. Thank you.

12 THE COURT: Thank you, Mr. Bernstein.

13 MR. BERNSTEIN: Good day.

14 THE COURT: Core Scientific and Core Scientific
15 Operating Company.

16 MR. KOENIG: Your Honor, again for the record,
17 Chris Koenig for Celsius. Their reservation of rights was
18 --

19 THE COURT: That was the thing that was resolved?

20 MR. KOENIG: To the extent their settlement was
21 not approved, their settlement was approved. I'm not
22 surprised that they're not here today.

23 THE COURT: Okay. All right. Next is 168 Trading
24 Limited. Is there anyone appearing for 168 Trading Limited?

25 MR. KOENIG: Your Honor, it's Chris Koenig. I'm

1 informed by my colleagues that they actually asked if they
2 could go at the conclusion. We're close on language and --

3 THE COURT: All right.

4 MR. KOENIG: -- that was a request that they --

5 THE COURT: I will --

6 MR. KOENIG: -- earlier.

7 THE COURT: The conclusion today or the conclusion
8 --

9 MS. BRIER: They just said last.

10 MR. KOENIG: Perhaps this is --

11 THE COURT: Ms. Nathanson? You're in mute.

12 MS. NATHANSON: Apologies, Your Honor. I'm the
13 next -- counsel for the next objector, so we're not quite up
14 to me.

15 THE COURT: You're for Koala or --

16 MS. NATHANSON: Yes.

17 THE COURT: All right. Okay. So I will move --
18 remind me to call -- I don't know where we're going to get
19 to today. Okay?

20 MR. KOENIG: And we'll email that as well.

21 THE COURT: Okay. Remind me to call them again at
22 the end of today, and if it's not today, we'll see where we
23 are. Okay.

24 MR. KOENIG: Thank you.

25 THE COURT: All right. Ms. Nathanson, Koala 2

1 LLC.

2 MS. NATHANSON: Thank you, Your Honor. Leigh
3 Nathanson from King & Spalding for Koala 2 LLC. We too had
4 filed a limited objection. This was based on Koala 2's
5 inclusion on the proposed list of equitably subordinated
6 entities. The Debtor subsequently filed some revisions to
7 the plan language that were designed to address our
8 objection, which was essentially to the effect that the plan
9 did not provide clearly for what would happen to a party
10 that was proposed to be equitably subordinated, but for
11 which the Court ultimately denied that subordination
12 proceeding, should that occur.

13 So the changes that the Debtors have proposed
14 resolve Koala 2's limited objection, but I did just want to
15 note for the record that this objection and Koala 2's
16 inclusion on the proposed equitable subordination list are
17 based on a factual inaccuracy that Koala 2 is an entity that
18 is controlled by Alex Mashinsky. It is not.

19 We've discussed with the Kirkland team that fact
20 and expect that given the stay of the equitable
21 subordination proceeding, we will have discussions with them
22 and either deal with that at the subordination proceeding or
23 potentially agree to some resolution beforehand. But I just
24 wanted to note for the record that fact.

25 THE COURT: All right. Thank you very much, Ms.

1 Nathanson. All right. Mr. Bronge, can you hear me?

2 MR. BRONGE: Yes, hello? Can you hear me?

3 THE COURT: Yes, I can.

4 MR. BRONGE: Yes. Good afternoon, I suppose it is
5 in New York. So --

6 THE COURT: It is.

7 MR. BRONGE: I, obviously, I'm a pro se and I'm
8 not a hundred percent sure what I'm supposed to do at this
9 stage, but I would like to bring up a couple of issues. One
10 is that I requested for the witness Oren Blonstein and I
11 have not heard anything about that. So, I don't know if
12 that's going to show up or not because I also saw that the
13 Debtor have objected to it.

14 THE COURT: Well, let me see. One of the Debtors'
15 lawyers has approached the podium, and let me have her
16 identify herself and we'll see what happens.

17 MS. BRIER: Good afternoon, Your Honor. Grace
18 Brier, Kirkland & Ellis on behalf of Debtors. Your Honor,
19 Mr. Bronge requested Mr. Blonstein's testimony as part of
20 his exhibit list and witness list. Mr. Blonstein's a
21 Celsius employee. He's the chief compliance officer there.

22 We filed an objection to his testimony, a motion
23 in limine, on October 13th. It's Docket No. 3802. For the
24 reasons that we list in there, we anticipate based on Mr.
25 Bronge's objection, that it will be questioning that is

1 duplicative of questioning he already posed to Mr. Ferraro
2 who was here last week or two weeks ago and offered
3 testimony in response to Mr. Bronge's questions.

4 Mr. Bronge responded and said that he does not
5 anticipate they will be duplicative and we filed our motion.
6 We think that if he's going to ask questions entirely
7 duplicative of Mr. Ferraro's questioning, it would be
8 duplicative and unnecessary. And to the extent he can
9 proffer or allege that he --

10 THE COURT: Let's schedule Mr. Blonstein's
11 testimony, and I will not permit duplicative testimony on
12 it.

13 MS. BRIER: Thank you, Your Honor.

14 THE COURT: You'll be able to do it. So Mr.
15 Bronge, you'll get your deposition, but it can't cover what
16 Mr. Ferraro testified about.

17 MS. BRIER: And Your Honor, my understanding is
18 he's seeking testimony in Court from Mr. Blonstein. We have
19 reached out to Mr. Blonstein. He's based in California.
20 We'd request that he can testify remotely as we understand
21 it Mr. Bronge will be questioning remotely and he's, you
22 know, a few hours away at this point for a few questions, it
23 sounds like Mr. Bronge has.

24 THE COURT: Here's my suggestion. Well, here's my
25 order. Arrange his deposition. He's out of -- he's in

1 California. He's out of the subpoena range of the Court to
2 compel him to come to Court to testify. Let Mr. Bronge take
3 the deposition remotely and if there are non-duplicative
4 testimony questions and answers, he'll -- Mr. Bronge will be
5 able to introduce them here.

6 MS. BRIER: Understood.

7 THE COURT: So we won't have to have Mr. Blonstein
8 travel to New York and Mr. Bronge will get to ask his
9 questions.

10 MS. BRIER: Understood. Thank you, Your Honor.

11 THE COURT: Okay? And hopefully you can arrange
12 that within the next day or so.

13 MS. BRIER: We'll do what we can, Your Honor.

14 THE COURT: Mr. Bronge, does that work for you?

15 MR. BRONGE: Yeah, that sounds adequate. So, I
16 will not have duplicative questions. There might be one or
17 two in that area but they mainly a different focus.

18 THE COURT: All right. So Ms. Brier will be in
19 touch with you and arrange for the deposition of Mr.
20 Blonstein for non-duplicative questions and then you'll get
21 a transcript quickly prepared and whatever comes in will
22 come in. Okay? Is there anything else you wanted to raise,
23 Mr. Bronge?

24 MR. BRONGE: Yes. It has to do with the similar
25 objection that the Debtor had to the exhibit list I want to

1 have introduced. They objected to that as well, to all my
2 exhibits. I don't understand why, and I do -- I would like
3 the Court to allow them.

4 THE COURT: Ms. Brier, do you want to address the
5 issue of the exhibits that Mr. Bronge has offered?

6 MS. BRIER: Yes, Your Honor. We filed objections
7 to and responses to the exhibits that Mr. Bronge included on
8 his exhibit list.

9 THE COURT: Right.

10 MS. BRIER: Largely, our objections were that they
11 were more appropriately judicially noticed and entered into
12 evidence. A lot of them are docket filings. I'm happy to
13 walk through each of them. I think there are 11, but it's
14 on Docket No. 3810.

15 THE COURT: All right. Just give me a second.

16 MR. BRONGE: I did early this morning file an
17 extended, an updated list as well. Obviously, I'm not 100
18 percent familiar what the difference is to have the document
19 in evidence or as a judicial notice.

20 THE COURT: I'm a little bit at a loss. Are there
21 --

22 MS. BRIER: Your Honor, do you want -- would you
23 like us to pull up our objections to the --

24 THE COURT: Yeah, could you?

25 MS. BRIER: Absolutely. So this is Docket No.

1 3810. If someone could please get that to our helpful trial
2 tech, we would love to be able to show that to the Court.

3 CLERK: Excuse me, who am I making a cohost, if
4 I'm -- is it -- who's screen sharing?

5 MR. LOPEZ: Jose Lopez.

6 MS. BRIER: Jose Lopez, please.

7 CLERK: Okay, he is a cohost.

8 MS. BRIER: Thank you. And actually -- thank you.

9 And if you --

10 THE COURT: Just give me a minute.

11 MS. BRIER: Of course.

12 THE COURT: I'm trying to put them up on my other
13 computer as well.

14 MS. BRIER: Excellent.

15 THE COURT: Sorry for the delay.

16 MS. BRIER: No problem.

17 THE COURT: All right. So I have 3810 open on my
18 own computer rather than just on the -- on what's on the
19 screen.

20 MS. BRIER: Excellent.

21 THE COURT: I'm looking at Mr. Bronge --

22 MS. BRIER: Perfect.

23 THE COURT: -- his exhibit offer.

24 MS. BRIER: All right, so I'm looking at Page 3,
25 starting with Johan Bronge's first exhibit, Mashinsky

1 declaration. We could pull that -- yeah.

2 THE COURT: Mashinsky declaration?

3 MS. BRIER: Yes. Your Honor, we have no objection
4 to the admission of the Terms of Use that were attached to
5 Mashinsky's declaration and in fact, they are already in
6 evidence as Debtors' Exhibit 38. He seeks to admit the
7 entire filing. We just objected to the admission of the
8 declaration itself, which just describes the contents behind
9 it. But to the extent he intends to use anything in that,
10 we're happy to discuss it. If he just is using the Terms of
11 Use, already in evidence as Exhibit 38.

12 THE COURT: Well --

13 MR. BRONGE: Yeah, can -- so I do intend to use
14 certain parts in the preceding pages as they are relevant to
15 my arguments and to the whole Terms of Use, especially
16 because of the different version of the Terms of Use are
17 described when they were valid and certain other statements
18 in the beginning that are important as well.

19 THE COURT: I'm overruling the objection and the
20 Mashinsky declaration is an admission and it comes into
21 evidence.

22 MS. BRIER: Let me see. Exhibits 2 -- I don't
23 know if it's easier to do this by category or by each
24 exhibit. I'm happy to --

25 THE COURT: Well, you can tell me by category and

1 then we'll see if we have to go through by exhibits.

2 MS. BRIER: Understood. Exhibits 2, 5, 6, 7, 8,
3 9, 10, and 11, it's our position that they are more
4 appropriately judicially noticed than entered into evidence,
5 as many of them are filings or complaints or legal arguments
6 as opposed to evidence that would be admissible.

7 MR. BRONGE: Okay, can I comment on that?

8 THE COURT: Go ahead.

9 MR. BRONGE: Yeah. First of all, I would
10 appreciate if you can explain the difference between the
11 document being in evidence and subject to judicial notice
12 from a legal standpoint.

13 THE COURT: I'm going to sustain the objection.
14 I'll consider it as judicial notice, so that's Exhibits 2 --
15 Ms. Brier, which were the other ones?

16 MS. BRIER: 2, 5, 6, 7, 8, 9, 10, and 11.

17 THE COURT: What about Exhibit 3?

18 MS. BRIER: So three is, I think a category
19 slightly separate from the others that we -- has a slight
20 caveat. The others, I think, all fall within the category
21 of judicial notice.

22 MR. BRONGE: So if I, I still would like to
23 understand the difference between judicial notice and to the
24 document being in evidence. Can the Debtor explain that?
25 The reason is that in the Exhibit 3 as well, there is

1 statements and legal conclusions regarding securities that I
2 would like to have --

3 THE COURT: Mr. Bronge --

4 MR. BRONGE: -- able to argue from. Yes?

5 THE COURT: Mr. Bronge.

6 MR. BRONGE: Yes.

7 THE COURT: It was largely without admission, or
8 without admitting or denying, so this is not -- it may be
9 that that was the resolution of the DOJ, you know, for DOJ
10 non-prosecution agreement for an SEC complaint, but there
11 are only portions of it which are actually binding on the
12 Debtor. So I'll take judicial notice of them but they're
13 not properly in evidence as admissions.

14 MS. BRIER: Yes, Your Honor, and part of that
15 document is in, depending on what he asks about. We're
16 happy to object to that as well, but that was our position.

17 THE COURT: Okay.

18 MR. BRONGE: May I use those references for argue
19 --

20 THE COURT: Well, you can try. We'll see how --
21 we'll have to see as we go along.

22 MR. BRONGE: Okay.

23 THE COURT: I'm just making some notes here.

24 Does that deal with all of Mr. Bronge's --

25 MS. BRIER: That deals with all of his evidentiary

1 -- proposed exhibits, to the extent he offers any evidence
2 at this time. I don't understand. He submitted a
3 declaration but reserved the right to cross examine on
4 anything he submits at this time.

5 THE COURT: All right. Go ahead, Mr. Bronge.

6 MS. BRIER: Thank you, Your Honor.

7 MR. BRONGE: Okay. So I understand that this is
8 not the time to do a proper argument. Is that correct?

9 THE COURT: You can make your argument now, sure.

10 MR. BRONGE: Okay. So I have two lines of
11 argument that I want to pursue going forward and I also
12 reserve to have another go at this at the late -- later,
13 more appropriate state. But what I shortly trying to argue
14 is the ownership of the collateral and I base that on my
15 first loan, primarily. And let me see if I can give you the
16 docket number of that.

17 My -- let me see here, where it is. So I have
18 filed an objection and I also filed a motion regarding the
19 collateral ownership. My first loan is governed by the
20 Terms of Service No. 7, the loan agreement number seven,
21 which I think unambiguously states that there is no legal
22 title transfer on collateral. Therefore, I think that the
23 collateral ownership of that loan particularly should be
24 that the legal title reside with me and it is not part of
25 the bankruptcy estate.

1 And I also argue that the same applies for my
2 other loans that are governed by Terms of Service No. 9.
3 The basic only thing that has changed in that -- in the No.
4 9 from No. 7 is one sentence that has been added that
5 collateral is exclusive property of Celsius.

6 Now, I argue that when you look at the Terms of
7 Service, the intention of a collateralized loan agreement is
8 not to transfer title and should there be a transfer of
9 legal title involved, it should be explicitly state so, not
10 just a cursory one sentence or not even one sentence in one
11 paragraph, while all other paragraphs referring to the
12 collateral as the borrowers or it's even so in the
13 definition.

14 Additionally, in the terms, General Terms of
15 Service and the Risk Disclosure, it also specifically state
16 that the borrower's risk is not being able to fulfill the
17 loan obligation. And that is when the collateral is at
18 risk. And that is very different from what it states when
19 it comes to the Earn accounts. So I will obviously have a
20 better prepared speech when I come to argument because I
21 thought this was not the time to do this.

22 The other line of -- that I will follow is Earn
23 subordination. Several governmental entities have rulings
24 saying Earn is a security and securities would be
25 subordinated in Chapter 11. Especially this plan, I would

1 receive a significantly better recovery under Chapter 7
2 where Earn would be subordinated. That also was admitted by
3 the expert Mr. (audio glitch) in the last hearing.

4 So finally, the last thing I want to argue is that
5 the valuation of the collateral is unfair and incorrect.
6 There has been a lot of discussion regarding CEL token
7 valuation where there has been witnesses and arguments that
8 there has been manipulated market in relation to the price
9 of CEL, and that should preclude the use of the petition
10 price. Now, this turns out that the same is -- seems to be
11 true with Bitcoin as it was heavily shorted by FTX during
12 the time of the bankruptcy of Celsius.

13 That's one thing, but the proposed plan had
14 different pricing of Bitcoin. I specifically refer to
15 Bitcoin collateral, but it's true even for other collateral
16 because the Debtor suggests to use petition price when
17 valuing the collateral, but when you give back collateral
18 after dollarizing, you use market prices.

19 Now, obviously, when you have the petition price
20 done at the bottom of a bear market, it's very likely that
21 the market price when the actual repurchase of the remaining
22 collateral value in Bitcoin will significantly reduce the
23 amount of Bitcoin you get back, which is unfair. So my
24 argument is that the valuation should be, one, so either you
25 use market prices all the time or you use petition prices

1 all the time. And I think the fairest thing is to use
2 market prices as all crypto markets are manipulated one way
3 or another, short selling, long selling, or as in the case
4 of CEL, by trying to increase value for insiders.

5 So these are the three lines of argument and when
6 it comes to the more appropriate time, I will have the
7 references all ready for this.

8 THE COURT: Let me ask one -- ask for
9 clarification. So I understand one of your arguments to be
10 that collateral as a legal matter remain property of the
11 account holder as opposed to becoming property of the
12 Debtor. Am I correct in that, that's your argument, Mr.
13 Bronge?

14 MR. BRONGE: That's absolutely correct. And --

15 THE COURT: Okay.

16 MR. BRONGE: And --

17 THE COURT: And I would just say that when we get
18 to any closing briefs, I would expect the Committee and/or
19 the Debtor to address that issue specifically. I mean, the
20 issue has come up in the case before. It's not precisely
21 what was decided in the Earn opinion because it didn't deal
22 with the collateral.

23 I think it would during one other earlier day in
24 the hearing. I think I was actually pointed to and we did
25 look at the language in the Terms of Use. I think it may

1 have been from an earlier version, I don't remember which
2 version, and looked at the difference in the language. I
3 just -- I'm not reaching a conclusion. It just did -- it
4 appeared to me then, that the Debtor had the better side of
5 the argument, that Debtor and the Committee had the better
6 side of the argument that collateral did become property of
7 the estate.

8 But I'll -- I'm going to reserve any ruling on
9 that. So I understand your point on that, Mr. Bronge. I
10 think it's a fair legal argument to -- that has to be
11 addressed.

12 MR. BRONGE: Yes, Your Honor --

13 THE COURT: I'm not sure I follow --

14 MR. BRONGE: (indiscernible)

15 THE COURT: Let me just say I'm not sure I
16 followed completely when you were talking about on
17 valuation, market price.

18 MR. BRONGE: Yeah. So let me see if I can explain
19 it better. So when -- because of the dollarization that is
20 done, there is a petition date price on all the different
21 cryptocurrencies. Now when you -- let's say you do the set
22 of treatment like the debtor has planned in his plan. You
23 would use that petition price for bitcoin. So if you settle
24 for low, one bitcoin will only be valued to \$19,980 roughly.

25 But when you -- when the excess collateral after

1 such treatment is going to be handed back to the borrowers
2 after the haircut that is in the plan, it will then go out
3 and buy bitcoin for the remaining value and then use market
4 prices. And for instance, today I think it's \$8,000, \$9,000
5 more expensive per bitcoin. And that gives you an
6 additional 30 percent haircut on your bitcoin recovery. For
7 me, that is very unfair and especially since bitcoin is
8 legal tender and used as a currency and a commodity. So --

9 THE COURT: The Bankruptcy Code requires that you
10 use dollars and not bitcoin. But I think I understand your
11 point.

12 Mr. Koenig, did you want to respond?

13 MR. KOENIG: Yes. Thank you, Your Honor. Chris
14 Koenig, from Kirkland & Ellis, for the debtors. I just
15 wanted to point out on the loan terms of use points is
16 actually in our confirmation brief and, not surprised, it's
17 a long document. But if Your Honor wanted to look at that,
18 we'll for sure address it again in closing argument, but if
19 you wanted to refresh the citations we have.

20 THE COURT: And I did look at it. But we'll --
21 it's important. He's not -- Mr. Bronge is not the only
22 person to raise this --

23 MR. KOENIG: No. It's a very fair point.

24 MR. BRONGE: May I interject there? Because --

25 THE COURT: Yes, go ahead.

1 MR. BRONGE: Yeah. In this response to my motion
2 that the debtor has filed and I have responded to as well,
3 they state only citations from version nine of the loan
4 terms of years and that is, let me say, a little bit unfair
5 since the wording is different in version seven, which is
6 the one that controls the loan I'm discussing here.

7 There is also in those pages that the debtor
8 conveniently didn't want to have as evidence statement that
9 says that the version that was in force when the loan was
10 approved is the one that controls the loan, which means if
11 you have a loan from, let's say, early 2021, you fall under
12 this version seven. There is no statement of exclusivity --
13 exclusive property to Celsius in that version seven, while
14 there is in version nine. And there is quite a few
15 references where it's abundantly clear that there is no
16 legal title transfer in version seven.

17 In addition, as I said, in the general disclosure,
18 risk disclosure, there is specific -- it's a specific
19 section stating that the borrower's risk is in conjunction
20 with notes fulfilling the loan obligation. And finally, the
21 debtor has in the 168 -- where they discuss the 168 issue,
22 they refer to their master loan agreement in one space, and
23 there it's again unambiguously clear how it's written when
24 you do transfer title. Very different from any other terms
25 and service that the retail borrowers have.

1 Additionally the debtor has not shown, properly
2 shown any of their master loan agreements which they argue
3 are different from the retail loan agreements, and that's
4 why these groups should have different treatment. But as
5 long as they don't show those agreements, it's just hearsay
6 in my view. So there's two places in the terms and service
7 and at least one master loan agreement where you can
8 explicitly see how the agreement should be written if there
9 is an attempt to try and transfer the ownership title, and
10 it's that master loan agreement for the 168 issue. It's
11 also in the sale and repurchase agreement that was the
12 structure that was done in UK. You can see -- if you
13 compare those two agreements, it's abundantly clear that
14 title is transferred in the sale and repurchase agreement.

15 But no such statements are available in any of the
16 terms of service for the retail loans, not even in number
17 nine. So to me, it's no question here because in a common
18 sense approach (indiscernible) collateralized loan agreement
19 not to transfer title. Those are done to provide security
20 for an obligation to repay a loan. If they --

21 THE COURT: Well, I'm not sure that the language
22 in the terms of use supports your argument. But we're going
23 to leave that for the closing.

24 MR. BRONGE: Yes. I understand that. But --

25 THE COURT: Because I don't have the terms of use

1 open in front of me, Mr. Bronge.

2 MR. BRONGE: No. There is many --

3 THE COURT: But I recall it saying that when
4 collateral is deposited with the debtor, they have the right
5 to hypothecate, rehypothecate, et cetera, all of the
6 attributes of ownership.

7 MR. BRONGE: Yes. But --

8 THE COURT: But that's not the issue. I
9 understand your argument, Mr. Bronge.

10 MR. BRONGE: Yeah. So --

11 THE COURT: (indiscernible) have we gone through
12 all of his list of exhibits and, one, I overrule the
13 objection as to the Mashinsky declaration, which comes in as
14 an admission; 2, 3, 5, 6, 7, 8, 9, 10 and 11 are all
15 judicial notice.

16 WOMAN 1: Yes, Your Honor. Two points from our
17 end. To the extent any of his testimony, or I --

18 THE COURT: That wasn't testimony.

19 WOMAN 1: That was exactly my question. I was
20 wondering if any of that --

21 THE COURT: It's not testimony.

22 WOMAN 1: -- was given testimonial value. Thank
23 you. Then no cross from us as to that argument.

24 THE COURT: Right.

25 WOMAN 1: And to the extent we are sending up Mr.

1 Bronstein's declaration, my understanding from Your Honor's
2 order is that we will be entering that evidence --

3 THE COURT: Correct.

4 WOMAN 1: -- as deposition designation --

5 THE COURT: Yes.

6 WOMAN 1: -- from the deposition.

7 THE COURT: Correct.

8 WOMAN 1: Understood. We just would reserve
9 rights to enter a rebuttal evidence to the extent anything
10 is still open as to his evidence to that point.

11 THE COURT: That's fine. Okay. All right. All
12 right.

13 Thank you, Mr. Bronge.

14 MR. BRONGE: Thank you.

15 WOMAN 1: Thank you, Your Honor.

16 THE COURT: All right. Just bear with me now.

17 The next is Harrison Schoenau, and I may have mispronounced
18 your name. Is Mr. Schoenau on Zoom?

19 Mr. Colodny?

20 MR. COLODNY: Hi, Your Honor. Aaron Colodny, from
21 White & Case, on behalf of the Official Committee of
22 Unsecured Creditors. Mr. Schoenau objected to the ADR
23 procedures.

24 THE COURT: I'm having a little trouble hearing
25 you.

1 MR. COLODNY: Sorry. Mr. Schoenau objected to the
2 ADR procedures, and we've been working with him and counsel
3 for the withhold group this week. I think we're very close.
4 We're talking about form discovery requests that hopefully
5 will speed up the exchange of information between parties,
6 and I hope that we get to the bottom of that shortly. We've
7 been trying to push that along with Your Honor's comment
8 last week and hope to be done soon.

9 THE COURT: All right. Mr. Davis, you're next.

10 MR. DAVIS: Thank you, Your Honor. Your Honor,
11 I'm objecting to the 25-cent CEL token settlement between
12 the UCC and the debtors. I'm also objecting to the UCC and
13 the debtors giving me 81 cents for my CEL token in custody
14 and 25 cents for my CEL tokens in Earn, which is not
15 equitable, which objections are all outlined in my
16 "Statement Under Oath of Otis Davis" located at Docket 3769.

17 Your Honor, the day the UCC and the debtors agreed
18 to give CEL token holders in custody 81 cents which was on
19 or around February 28, 2023 is the day the debtors and the
20 UCC agreed that all CEL token holders, regardless if they're
21 in custody or Earn to get 81 cents and Your Honor approved
22 that CEL token custody settlement.

23 I also object, Your Honor, to the Max Galka expert
24 report for undisclosed bias which is also in my statement
25 under oath at Docket Number 3769. And lastly, Your Honor, I

1 would also like to join in Johan Bronge's deposition
2 request. I have a few questions for Mr. Blonstein as well.
3 Thank you.

4 THE COURT: Well, first off, Mr. Davis, unless you
5 requested and this Court approved remote testimony, your
6 direct testimony does not come in.

7 What's the position of the debtor with respect to
8 that? I set this out quite clearly in an order for today's
9 hearing that Federal Rule of Civil Procedure 43(a) requires
10 in-court testimony. Written direct is fine, but the
11 declarant has to be available in court for cross-
12 examination. Let me first -- were you able to take Mr.
13 Davis's deposition?

14 MR. MCCARRICK: We were, Your Honor.

15 THE COURT: All right. Do you object to his --
16 the direct occurring by Zoom?

17 MR. MCCARRICK: I think Your Honor is well within
18 your rights to enforce the pretrial procedures which were
19 clear I think on multiple occasiosn that --

20 THE COURT: Where are you located, Mr. Davis?

21 MR. DAVIS: I'm in Jamaica.

22 MR. MCCARRICK: We're prepared to proceed with
23 cross-examination, to the extent that Your Honor wishes.
24 But we think your pretrial order was clear and that a
25 request has not been filed by Mr. Davis to submit his direct

1 or to appear remotely for purposes of this hearing.

2 THE COURT: Mr. Davis, did you receive the order
3 that said that if you wished to have remote testimony, you
4 had to file an application?

5 MR. DAVIS: No, Your Honor. I don't recall seeing
6 it.

7 THE COURT: It was just filed a couple of days
8 ago.

9 MR. DAVIS: I'll check the docket. But I don't
10 recall seeing it. I'm outside the country. I simply don't
11 recall seeing it.

12 MR. MCCARRICK: However Your Honor wants to
13 proceed, the debtors are happy to, although, if it's
14 acceptable, we will ask Mr. Davis to go on camera for his
15 cross.

16 THE COURT: Yeah. Just a second. So I'm
17 referring to ECF Document 3813. It was filed on the docket
18 on October 13, 2023, and it says, in part, beginning at the
19 bottom of Page 1, "For the direct testimony to be admitted
20 in evidence, witnesses must appear in the courtroom for
21 cross-examination and redirect examination unless the Court
22 permits remote appearance by Zoom pursuant to Federal Rule
23 of Civil Procedure 43(a) which requires, in relevant part,
24 'for good cause and compelling circumstances and with
25 appropriate safeguards, the Court may permit testimony in

1 open court by contemporaneous transmission from a different
2 location.' Witnesses requesting to appear remotely must
3 file an application with the Court requesting to do so and
4 must satisfy the compelling circumstances standard." You
5 didn't do that. I'm going to reserve ruling on whether I'm
6 going to permit your testimony to be considered by the
7 Court. You submitted -- you submitted written direct. Let
8 me just find it again.

9 MR. DAVIS: Your Honor, does that include my
10 deposition or that's outside my deposition?

11 THE COURT: Just stop.

12 MR. MCCARRICK: Your Honor, the docket number --

13 THE COURT: 3769.

14 MR. MCCARRICK: Beat me to it.

15 THE COURT: So your "Statement Under Oath of Otis
16 Davis" was submitted before the Court posted what is the
17 rules. I didn't make up the rules about what oath has to
18 be. I will take it under consideration. I'll permit you to
19 cross-examine Mr. Davis now. So your direct testimony is in
20 evidence, subject to being stricken for failure to comply
21 with the rules. But I'll permit you to go ahead and cross-
22 examine Mr. Davis now.

23 MR. MCCARRICK: Thank you, Your Honor. May I
24 approach with copies of the cross-examination exhibit
25 binder?

1 THE COURT: Sure. Please. Go ahead.

2 CLERK: Judge Glenn? He has to be sworn in? He
3 has to be sworn?

4 THE COURT: Yes. He has to be sworn, particularly
5 since he didn't follow the oath for the --

6 MR. MCCARRICK: Yes, and could I ask that his
7 camera be enabled?

8 THE COURT: Yeah. Could you turn your camera on,
9 Mr. Davis?

10 MR. MCCARRICK: Your Honor, I didn't know I was
11 going to be deposed today. I have a t-shirt and shorts on.

12 THE COURT: Mr. Davis, if you want your testimony
13 considered, you have to turn your camera on.

14 MR. DAVIS: I'm not saying no. I'm just telling
15 you I have a t-shirt and shorts on.

16 THE COURT: That's fine. That's fine. If you
17 would raise your right hand, and the ECRO operator will --

18 MR. DAVIS: Can I put a white shirt -- can I put a
19 regular white shirt on?

20 THE COURT: Mr. Davis, raise your right hand and
21 be sworn.

22 CLERK: Do you solemnly swear or affirm that all
23 the testimony you're about to give before this Court is the
24 truth and the whole truth?

25 MR. DAVIS: Yes, I do.

1 THE COURT: Okay.

2 MR. MCCARRICK: May I proceed?

3 THE COURT: Yes.

4 CROSS-EXAMINATION OF OTIS DAVIS

5 BY MR. MCCARRICK:

6 Q Good afternoon, Mr. Davis.

7 A Good afternoon.

8 THE COURT: Just identify yourself for the record.

9 MR. MCCARRICK: This is TJ McCarrick, Kirkland &
10 Ellis, on behalf of the debtors.

11 BY MR. MCCARRICK:

12 Q You've offered an opinion on the value of CEL token,
13 correct?

14 A The petition date price opinion, which was 81 cents.
15 Correct.

16 Q And that's right, your view, your personal view is that
17 CEL token's value as of the petition date was 81 cents,
18 correct?

19 A Correct.

20 Q That 81 cents figure is based on the price of CEL token
21 on the petition date?

22 A That is correct.

23 Q And so what you're focused on is the price, correct?

24 A The price.

25 Q And you agree with me there's a difference between

1 price and value, correct?

2 A I do.

3 Q You personally didn't conduct a valuation of CEL token,
4 correct?

5 A I did not.

6 Q And you're not qualified to provide a valuation of CEL
7 token, correct?

8 A I'm not an expert.

9 Q Yeah. I tallied up --

10 A No, I'm not.

11 Q I'm sorry. Please.

12 THE COURT: He answered your question, I thought.

13 MR. MCCARRICK: Okay.

14 BY MR. MCCARRICK:

15 Q Okay. You're not trained in valuation techniques,
16 correct?

17 A Correct.

18 Q And instead you're offering a valuation opinion from
19 someone you claim is an expert witness, Hussen Faraj,
20 correct?

21 A Correct.

22 Q And your expert does not agree with you that the value
23 of CEL token is 81 cents, true?

24 A He came to the valuation of 71 cents.

25 Q And 71 cents is different than 81 cents, correct?

1 A Yes, it is.

2 Q The 71 cents is also different from the 86-cent value
3 that you discussed in your sworn statement, true?

4 A I don't recall discussing any 86-cent value in my sworn
5 statement.

6 MR. MCCARRICK: Okay. Can we display Celsius
7 Exhibit 82, which would be Tab 1 in the cross binder. It's
8 Mr. Davis's sworn statement.

9 CLERK: Give me one moment, please. All right.
10 Mr. Lopez is a co-host.

11 MR. MCCARRICK: Thank you, and can we turn to Page
12 PDF -- or PDF Page 86, Exhibit 82? And can you blow up the
13 top paragraph there?

14 BY MR. MCCARRICK:

15 Q This is an excerpt from your sworn statement in which
16 you're discussing the expert report of Mr. Galka, correct?

17 A Correct.

18 Q And what you're observing here is that certain
19 dislocation events were backed out, Mr. Galka's price should
20 have been 86 cents, correct?

21 A I think that should have been -- it could have been 81.
22 But I don't recall doing the 86 cents.

23 Q Well, do you see at the last line here where it says, I
24 will submit to this Court the average price between both
25 dislocation events is 86 cents?

1 A I see that.

2 Q Okay. You also in your --

3 MR. MCCARRICK: You can take that down, Mr. Lopez.

4 Thank you.

5 BY MR. MCCARRICK:

6 Q You also in your sworn statement refer to a \$2.01 price
7 value, correct?

8 A Correct.

9 Q And your expert doesn't agree with you that the value
10 of CEL token is \$2.01, correct?

11 A He does not.

12 Q You also discussed a \$2.88 figure in your sworn
13 statement, correct, Mr. Davis?

14 A Correct.

15 Q And your expert doesn't agree with you that \$2.88 is
16 the value of CEL token on the petition date, correct?

17 A He didn't opine on the \$2 billion claim that was filed
18 in the FTX bankruptcy.

19 Q So is that a yes to my question, Mr. Davis, that your
20 expert does not agree with you that the value of CEL token
21 on the petition date is \$2.88?

22 A My expert agreed that the value is 71 cents. You are
23 correct.

24 Q Okay. So fair to say, sir, you've put forward four
25 different potential CEL token valuations, 81 cents, 86

1 cents, \$2.01 and \$2.88, correct?

2 A Sir, I'm not an expert. The \$2.01 came from a
3 dislocation event. But your expert, Mr. Galka, said as a
4 result the price would be 35.5 cents based on a dislocation.
5 So I said why not use the Terra Luna dislocation event which
6 is a much bigger dislocation event. Why are you just using
7 one dislocation event? We had two huge dislocation events
8 in crypto and the Terra Luna one was much bigger.

9 Q Okay, and just to be clear, what you're talking about
10 now are the two dislocation events that you think should
11 have been, or that you criticize Mr. Galka for not using,
12 correct?

13 A Correct.

14 Q Or for not backing out, I should say, correct?

15 Q My opinion is if he's going to use one dislocation
16 event, why not use other dislocation event, which was much
17 bigger.

18 Q And let's just get on the record what those dislocation
19 events are. The first dislocation event is the collapse of
20 Terra Luna you just testified about, correct?

21 A Correct.

22 Q The second dislocation event is the pause on June 12,
23 2022, on Celsius's platform, correct?

24 A Correct.

25 Q And you think, sir, that the fair market value of CEL

1 token is best measured before both of those dislocation
2 events, don't you?

3 A Sir, I'm not an expert. My expert agreed that 71 cents
4 is a fair value for CEL token. I was simply pointing out
5 that -- I was simply pointing out that Mr. Galka, prior to
6 the pause, said the price should be 35.5 cents. That's one
7 dislocation event. And I was saying to the Court, if you're
8 going to use this dislocation event, why not use the other
9 dislocation event where the price was \$2.01? You can't just
10 use one dislocation event and ignore a bigger dislocation
11 event.

12 Q Okay. I just want to make clear, it is your sworn
13 testimony that the fair market value of CEL token is best
14 measured before the Terra Luna dislocation event and the
15 pause, true?

16 A Correct. That's what I wrote.

17 Q That's what you put in your sworn statement, correct?

18 A That's what I put in my sworn statement.

19 Q Terra Luna collapsed May 6, 2022, correct?

20 A It happened over a timeframe. It didn't happen in one
21 day.

22 Q Okay. What's the timeframe, sir?

23 A I think the timeframe was around -- I think it was
24 around May 7th to May 12th, May 13th.

25 Q All right. So it's your position that any valuation of

1 CEL token should be before May 7, correct?

2 A Sir, my opinion is if Mr. Galka is going to use one
3 dislocation event, why not use another? That's all I was
4 saying. There are two dislocation events. Why would you
5 choose the lower one? If you're going to choose 35.5 cents,
6 why not choose the \$2.01 cents?

7 Q My question, Mr. Davis, is, is it your position that
8 the fair market value of CEL needs to be measured, or is
9 best measured before both of those dislocation events, yes
10 or no?

11 A Sir, my fair market value of CEL, I agree with my
12 expert, should be 71 cents. I'm not an expert. I did
13 provide this document.

14 THE COURT: Mr. Davis, listen to the question
15 again, and then answer the question.

16 Go ahead, ask your question again, Mr. McCarrick.

17 BY MR. MCCARRICK:

18 Q Mr. Davis, is it your position that the fair market
19 value of CEL token is best measured before the collapse of
20 Terra Luna and the pause, yes or no?

21 A No.

22 Q Okay. You submitted a sworn statement in this case,
23 correct?

24 A Correct.

25 Q Told the truth in that sworn statement, didn't you?

1 A I did.

2 Q You had the chance -- actually, you submitted an
3 unsworn statement first, correct?

4 A I'm not sure what that means.

5 Q Okay. Well, you submitted your sworn statement after
6 reviewing it carefully, correct?

7 A Correct.

8 Q And you stand by everything in that sworn statement?

9 A I do.

10 MR. MCCARRICK: Okay. Mr. Lopez, can we please
11 put Celsius Exhibit 81 back up? And we're going to go to
12 Page 6 of the PDF.

13 THE COURT: What's the page of the ECF? I want to
14 see it my screen here so I can see it.

15 MR. LOPEZ: ECF 3769, Page 6.

16 THE COURT: Page 6? Okay. Go ahead.

17 MR. MCCARRICK: It's Page 7 of the PDF with the
18 exhibit slip sheet. Okay.

19 THE COURT: Go ahead.

20 BY MR. MCCARRICK:

21 Q This is your sworn statement, correct?

22 A Correct.

23 Q Do you see where you write, "I submit to this Court
24 that the fair market value of CEL token is best measured
25 before both of these dislocation events, one being the

1 pause, the other being the gigantic collapse of the \$60
2 billion crypto project, Terra Luna."

3 A That was my opinion before I was in contact with my
4 expert. I filed it before speaking to my expert. I see
5 that, yes.

6 Q Well, that's not true, sir, is it? You contacted the
7 expert during the first or second week of October, right?

8 A But he didn't agree to testify then. We were just
9 talking.

10 Q Okay.

11 A He didn't agree to testify until, I think, around seven
12 or eight days ago, or write a report, I should say.

13 Q When was the first time you talked to Mr. Faraj?

14 A The first time ever?

15 Q Yes, sir.

16 A I think it was after Celsius filed for bankruptcy, and
17 he was on a (indiscernible) where I was on, I think,
18 probably July 2022 or maybe August 2022.

19 Q Okay. Well, the first time you talked to Mr. Faraj
20 about the expert report in this case was on October 6th,
21 wasn't it?

22 A It wasn't about the expert report that we discussed on
23 October 6th. He just contacted me and said, if you need
24 some help, I can provide some assistance. We didn't speak
25 about him writing a report until about, I think, around

1 seven or eight days ago.

2 Q Okay. Well, you posted on Twitter about Mr. Faraj's
3 71-cent valuation before October 11th, didn't you?

4 A Correct.

5 Q And you submitted this sworn statement on October 11th,
6 correct?

7 A October 11th was around five or six days ago, sir.

8 Q Right. My question is, you were aware of Mr. Faraj's
9 71-cent valuation before you submitted this sworn statement
10 to the Court, true?

11 A I was not aware of it.

12 Q Okay. So it's your -- I just want to be very clear.
13 It's your sworn testimony that you were not aware of the 71-
14 cent valuation before October 11th?

15 A It is my sworn testimony that I was not aware of Mr.
16 Faraj's 71-cent valuation before I submitted this. That is
17 my testimony, my sworn testimony.

18 Q Okay. In any event, you generally think that any
19 valuation should exclude trading data from the Terra Luna
20 collapse, correct?

21 A I'm not sure what that means.

22 Q Okay. You agree with me that Mr. Faraj, his own
23 valuation period, looked at data from May 21st to June 9th,
24 correct?

25 A Correct.

1 Q And you don't criticize Mr. Faraj for doing that, do
2 you?

3 A No, I do not. He's an expert. I'm not.

4 Q Well, Mr. Galka is an expert too, right?

5 A Yes. He's an expert. I disagree with his opinion.

6 Q Okay. You agree with me that Mr. Faraj, your expert
7 witness in this case, did not value CEL token as of the
8 petition date, correct?

9 A He did not.

10 Q Okay.

11 A You testified that Mr. Faraj contacted you to offer an
12 expert opinion in this case, right? He was the first one to
13 reach out to you?

14 A I don't recall who contacted who first. I remember
15 there are some tweets back and forth that were public, and
16 he could have contacted me first. I could have contacted
17 him first. I really don't remember who contacted who first,
18 but I believe he contacted me first. But as I said, I don't
19 recall who contacted who first.

20 Q Okay. Well, you gave a deposition in this case,
21 correct?

22 A Correct.

23 Q The deposition was, like, 48 hours ago?

24 A Correct.

25 Q You took the same oath that you took today?

1 A Yes, I did.

2 Q And you told the truth during that deposition?

3 A Yes, I did.

4 MR. MCCARRICK: Okay. Mr. Lopez, can we look at
5 Page 41, Lines 2 to 5 of Mr. Davis's deposition?

6 BY MR. MCCARRICK:

7 Q Do you have that? Do you see that on your screen
8 there, sir?

9 A I see that.

10 Q And did I ask you this question, and did you give this
11 answer:

12 Question: Okay. So who contacted who first? Did you
13 contact Mr. Faraj or did Mr. Faraj contact you?

14 Answer: He contacted me.

15 That's the testimony you gave, correct?

16 A Correct.

17 MR. MCCARRICK: Okay. You can take that down.

18 BY MR. MCCARRICK:

19 Q You spoke with Mr. Faraj twice on the phone, correct?

20 A Correct.

21 Q The first time, he offered to provide an expert report
22 on the value of CEL token, correct?

23 A I don't recall exactly what the first conversation was
24 about. They may blend in my mind, but if you have something
25 to refresh my recollection, I'm happy to look at it.

1 Q Sure. We can go back to your deposition. Let's look
2 at Page 33, Lines 20 to 24. And do you see where I asked
3 you what kind of assistance did Mr. Faraj offer, ad your
4 answer was, he said he could prepare an expert report and do
5 an analysis and come to the fair market price of CEL token.
6 Do you see that?

7 A Correct.

8 Q Is your recollection refreshed that that's the
9 assistance that Mr. Faraj offered you during the first phone
10 call you had with him?

11 A Correct, and I recall asking him if there would be any
12 charge, if he would charge, and he said no, he would not
13 charge me.

14 Q Okay. So Mr. Faraj said he wouldn't charge you. Did
15 he ask you to do anything in return?

16 A No. He did not.

17 Q Did he ask you to do --

18 A I did ask him --

19 Q Sorry. Go ahead.

20 A I did ask him why he's doing this. He says he loved
21 the space and he believes he can add value and give the
22 Court a proper valuation.

23 Q Okay. The second phone call you had with Mr. Faraj,
24 you claim you didn't discuss anything related to these
25 Chapter 11 cases at all, right?

1 A We didn't discuss anything related to the Chapter 11
2 cases because I said to him at the beginning of the
3 conversation that I don't have counsel here on this phone,
4 so I don't have any attorney-client privilege as far as I
5 know. So we shouldn't even discuss anything related to the
6 Chapter 11 or your expert report or what you're going to do
7 or your value or anything like that because it's all
8 discoverable.

9 Q Well, we'll get to whether or not it's discoverable in
10 a second. You communicated with Mr. Faraj in writing as
11 well, correct?

12 A Correct.

13 Q You direct messaged Mr. Faraj on Twitter, correct?

14 A Correct.

15 Q You had conversations with Mr. Faraj on WhatsApp
16 correct?

17 A Correct.

18 Q And at your deposition, I asked you to read those
19 messages with your expert witness into the record, didn't I?

20 A Yes, you did.

21 Q And you refused to do that, didn't you, sir?

22 A I did not read them into the record.

23 Q You acknowledge --

24 THE COURT: Did you refuse to do that?

25 THE WITNESS: I did refuse to do that, Your Honor.

1 THE COURT: Go ahead.

2 BY MR. MCCARRICK:

3 Q You acknowledge that in those messages you talked about
4 what the Court was interested in with respect to the value
5 of CEL token, correct?

6 A I don't recall that.

7 MR. MCCARRICK: Okay. Could we bring up Mr.
8 Davis's deposition, Page 44, Lines 13 to 22.

9 BY MR. MCCARRICK:

10 Q And I asked you some questions about whether or not you
11 had discussed the Court or what the Court is interested in,
12 correct?

13 A Correct.

14 Q Did I ask this question, and did you give this answer:

15 Question: I'm not assuming you disparaged Judge Glenn
16 at all. I'm just wondering whether or not you had any
17 conversations about what you think Judge Glenn might be
18 interested in and what testimony you might want to elicit
19 from Mr. Galka -- not Mr. Galka, excuse me, Mr. Faraj.

20 Answer: The conversation would be around Judge Glenn
21 wants a value for CEL token. Mr. Galka couldn't give him
22 that value.

23 Did I ask that question? Did you give that answer?

24 A Yes, you did.

25 MR. MCCARRICK: Okay. You could take that down,

1 Mr. Lopez.

2 BY MR. MCCARRICK:

3 Q Mr. Davis, you're familiar with the concept of utility
4 token, correct?

5 A Yes, I am.

6 Q A utility token is a token that is used in connection
7 with a particular ecosystem or platform, correct?

8 A Correct.

9 Q And a utility token's value primarily derives from the
10 use cases it has on the ecosystem it's in, fair?

11 A That is not fair.

12 Q Well, you would agree with me that the more utilities
13 that a token has, the better it is, right?

14 A Correct.

15 Q And CEL token is a utility token, in your view, right?

16 A It is.

17 Q Before the pause or petition date, you thought that
18 CEL's utility could use some improvement, correct?

19 A Correct.

20 Q In your view, there weren't enough use cases for CEL
21 before the pause and petition date, correct?

22 A Correct.

23 Q And in fact, you talked with Celsius's former CEO, who
24 is now under federal indictment, Alex Mashinsky, about how
25 to improve CEL, correct?

1 A Correct.

2 MR. MCCARRICK: Okay. Mr. Lopez, we'd like to
3 look at Celsius Exhibit 90, which is Tab 3 in the cross
4 binder. And can we go to Page 3 of the PDF? And can we
5 blow up the -- no, the one before that. I'm adjusting my
6 head, Mr. Lopez. Thank you.

7 BY MR. MCCARRICK:

8 Q That's an email from yourself to Mr. Mashinsky. Do you
9 see that?

10 A What date is this?

11 Q December 6, 2021. Do you see that's an email from you
12 on December 6, 2021?

13 A Correct. I see that.

14 Q It says CEL token fixes, correct?

15 A Correct.

16 Q And you proposed a number of changes to the CEL token
17 program, right?

18 A Correct.

19 Q And the idea was to make CEL more attractive to users,
20 true?

21 A True.

22 Q One of the reasons you wanted to make CEL more
23 attractive to users is so that Celsius wasn't the only whale
24 in the marketplace doing buybacks; is that correct?

25 A Celsius was not the only whale that I know that was in

1 the marketplace doing buybacks.

2 MR. MCCARRICK: Okay. Let's turn to Page 5 of the
3 PDF, and I want to look at Entry Number 32. Page 4. There
4 we go. Could we blow up Number 32?

5 BY MR. MCCARRICK:

6 Q Do you see where you wrote Mr. Mashinsky, you can
7 guarantee more people in the market like Celsius buying lots
8 of CEL tokens every week, and this creates a new flywheel
9 effect. Do you see that?

10 A I see that.

11 Q So it's your understanding that in December 2021,
12 Celsius was buying lots of CEL tokens on a weekly basis,
13 right?

14 A They did their weekly buybacks on a weekly basis.

15 Q And it's your understanding that those weekly buybacks
16 created a flywheel effect, correct?

17 A Correct.

18 Q And the gist of a flywheel effect is that by increasing
19 demand, CEL token price is going to rise and the cycle is
20 going to reinforce itself, true?

21 A True.

22 Q And at that time, sir, was it or was it not your view
23 that Celsius was the only whale making buybacks?

24 A Sir, I know what I wrote, but I could not have known
25 how many whales are buying CEL token. I wrote that, but

1 there is no way for me to know how many whales are buying
2 CEL tokens. We had a lot of whales in Celsius.

3 Q The only whale that you knew of at the time, sir, was
4 Celsius making buybacks, right?

5 A I didn't know of any of a specific whale, but there
6 were other whales, but I didn't know of any of a specific
7 whale.

8 Q Okay. This isn't the last time you talked to Mr.
9 Mashinsky about CEL.

10 MR. MCCARRICK: Actually, Your Honor, we'd like to
11 move Exhibit 90 into evidence.

12 THE COURT: Any objections? Exhibit 90 is in
13 evidence.

14 (Exhibit 90 admitted into evidence.)

15 BY MR. MCCARRICK:

16 Q Okay. That's not the last time you talked to Mr.
17 Mashinsky about CEL token utility, correct?

18 A Correct.

19 MR. MCCARRICK: Okay. Mr. Lopez, can we bring up
20 Celsius Exhibit 87? Can we turn to Page 2 of the PDF, and
21 can we blow up the bottom email from Mr. Davis so we can see
22 what the date is?

23 BY MR. MCCARRICK:

24 Q This is an email from you to Mr. Mashinsky on January
25 26, 2022. Do you see that?

1 A I see that.

2 Q And that is, in fact, a fair and accurate copy of your
3 email. We looked at this during your deposition, right?

4 A Right.

5 MR. MCCARRICK: Okay. Your Honor, we'd offer
6 Celsius Exhibit 87 into evidence.

7 THE COURT: All right. It's admitted in evidence.

8 (Exhibit 87 admitted into evidence.)

9 MR. MCCARRICK: All right. Let's look at Page 3
10 of the PDF, and I want to look at the paragraph, the last
11 paragraph that says, Alex, all you need. Can we blow that
12 up, Mr. Lopez?

13 BY MR. MCCARRICK:

14 Q Do you see in this paragraph, Mr. Davis, where you
15 write, we also voiced our concerns that CEL has no utilities
16 whatsoever?

17 A I see that.

18 Q And you write, it's only when the tide goes out you
19 realize who's swimming naked. The tide has gone out and CEL
20 is swimming naked. Do you see that?

21 A I see that.

22 Q And that was your view in January 2022. CEL had no
23 useful utilities, correct?

24 A CEL had no good utilities. They could add more. They
25 did have utilities. There was Earn in CEL, discount on

1 loans and higher swap limits. Those are utilities. And you
2 can also take loans against your CEL token. That's a big
3 utility.

4 Q Well, you said in January 2022 that it had no useful
5 utilities, right?

6 A Sir, I know what I said. I wrote the email to get the
7 attention of Alex Mashinsky because I could not get the
8 attention of Alex Mashinsky no matter what I did.

9 Q So is it your answer that you were saying something
10 that might have been inaccurate in order to get the
11 attention of someone whose attention you wanted?

12 A I was being hyperbolic. You seem to think that Alex
13 Mashinsky and I had a good relationship before the pause.
14 We did not and we don't now. I was hounding him for 15
15 months to add useful utilities. That's why I wrote the
16 email.

17 Q I just want to break that down, Mr. Davis. You were
18 hounding Mr. Mashinsky for 15 months to add useful utilities
19 to CEL that you did not think it had, correct?

20 A I didn't think it had enough utilities. I didn't think
21 Earn in CEL, discount on loans, highest swap limits and
22 taking a loan against your CEL token was enough. I thought
23 there should be more. An example that I gave you in the
24 deposition was withdrawal fees. When you withdraw Bitcoin,
25 ETH or other altcoins, the fee should be paid in CEL.

1 Q Understood, Mr. Davis. I was just following up on your
2 last answer. Your last answer was that you had been
3 hounding Mr. Mashinsky for 15 months to add useful utilities
4 to CEL, correct? That was your testimony.

5 A Correct.

6 Q And he didn't add that utility, correct?

7 A He didn't add any more utilities.

8 MR. MCCARRICK: Okay. Can we go to the next page?

9 BY MR. MCCARRICK:

10 Q You just listed a number of utilities that you said CEL
11 had at the time, right?

12 A Correct.

13 Q You didn't like any of those utilities, did you?

14 A That's not true. I love the swap utilities. I love
15 the loans utilities, had my CEL-backed loans liquidated. I
16 think the loans was one of the best utilities. I just
17 wanted him to add more. As I said, I was being hyperbolic.
18 We just needed more utilities as a community.

19 Q Okay. Well, you see here where you wrote Mr.
20 Mashinsky: I don't know how one -- withdrawn.

21 You see here that you wrote Mr. Mashinsky, I don't know
22 of one CEL utility that I use or that I like, not one.

23 That's what you wrote in January of 2022, correct?

24 A That was hyperbolic. I obviously had loans at that
25 point. And the loans were -- they totaled to be seven

1 figures, so that was hyperbolic. A loan is a very useful
2 utility.

3 MR. MCCARRICK: Okay. Mr. Lopez, you can take
4 that down.

5 BY MR. MCCARRICK:

6 Q Sir, it's true that you communicated with Mr. Mashinsky
7 in between the pause and the petition date, right?

8 A Your definition of communication, as we agreed in the
9 deposition, we disagree on because you are the attorney that
10 represented Mr. Mashinsky at that point, and you instructed
11 him not to speak to anybody. I sent Mr. Mashinsky a direct
12 message, and he did not respond. You are the attorney
13 Kirkland & Ellis that represented Mr. Mashinsky between the
14 pause and when he was ousted, and you directed him not to
15 speak to anybody, and he did not respond to that DM, and
16 that's what I told you at the deposition.

17 Q Well, I'll represent to you I've never spoken to Mr.
18 Mashinsky in my life. But my question -- I won't use word
19 communication, if it helps.

20 A I meant your firm.

21 Q You mentioned -- or withdrawn.

22 You messaged Mr. Mashinsky in between the pause and the
23 petition date, true?

24 A True.

25 MR. MCCARRICK: All right. Let's put up Celsius

1 Exhibit 102, which are a series of direct messages between
2 Mr. Davis and Mr. Mashinsky, and Your Honor, we would offer
3 Exhibit 102 into evidence.

4 THE COURT: What is it comprised? Just tell me
5 what it is.

6 MR. MCCARRICK: Your Honor, it's a series of
7 direct messages that begins in June of 2022 between Mr.
8 Mashinsky and Mr. Davis.

9 THE COURT: Are there messages back from
10 Mashinsky?

11 MR. MCCARRICK: There are not any messages.

12 THE COURT: They're all messages from Mr. Davis to
13 Mr. Mashinsky?

14 MR. MCCARRICK: Yes, Your Honor.

15 THE COURT: All right. Exhibit 102 is admitted in
16 evidence.

17 (Exhibit 102 admitted into evidence.)

18 BY MR. MCCARRICK:

19 Q Okay. Do you see here on June 24, 2022, that you write
20 Mr. Mashinsky, I've singlehandedly inspired the community
21 against these short sellers.

22 A I see that.

23 Q That refers to your efforts to organize the so-called
24 short squeeze, correct?

25 A It wasn't an effort to organize. I was DM'ing him to

1 get his attention, like I said before.

2 Q I'm sorry. I couldn't understand your answer. Could
3 you please repeat it?

4 A I was being hyperbolic once again here.

5 Q Okay. Well, fair enough.

6 A I can't singlehandedly inspire an entire community.

7 Q Okay. So when you said that here, that was false.

8 A It was not false. I was being hyperbolic. I wanted
9 him to respond to the message, but I knew between the pause
10 and petition date, he was probably pretty busy. And as you
11 can see, I did not get a response.

12 Q All right. Well, do you see a couple of lines down
13 where you say, that's what you need them to do, make them
14 believe, give them a reason to believe. Useful utility/use
15 cases around CEL and not gimmicks will give them that reason
16 to believe. Do you see that?

17 A Yes, I see that.

18 Q And that's consistent with the January 2022 email we
19 just looked at where you're complaining about the use cases
20 of CEL, right?

21 A In this instance, I thought we were going to open back
22 up. The pause is just temporary. And my opinion was if
23 you're going to open back up, you need to add more utilities
24 to CEL tokens. The ones that you have, because we have a
25 market downturn, would just not be enough. You need to add

1 more utilities.

2 Q Well, you also were complaining about the lack of
3 utilities on CEL back in January of 2022, well before any
4 pause, correct?

5 A Yes.

6 Q Okay. Sir, is it your view today that CEL is
7 worthless?

8 A No, it's not.

9 MR. MCCARRICK: All right. Let's put up Celsius
10 Exhibit 99, which is a tweet from Mr. Davis. And can we
11 blow up the top part of that, Mr. Lopez? I can't see it.

12 First we'd move Celsius Exhibit 99 into evidence.

13 THE COURT: It's in evidence.

14 (Exhibit 99 admitted into evidence.)

15 BY MR. MCCARRICK:

16 Q Okay. Mr. Davis, do you see where you wrote here, at
17 Celsius Network is a bankrupt company with a worthless
18 token?

19 A I see that.

20 Q I asked you about this tweet at your deposition,
21 correct?

22 A I think you did.

23 Q I asked whether CEL is a worthless token, and you told
24 me that the document speaks for itself, correct?

25 A I think I said that.

1 Q Do you want me to refresh your recollection? Would
2 that be helpful?

3 A Yes, please.

4 MR. MCCARRICK: Okay. Can we bring up Mr. Davis's
5 deposition, Page 92, Lines 13 to 14.

6 MR. LOPEZ: (indiscernible)

7 MR. MCCARRICK: (indiscernible) the Internet?
8 Okay.

9 BY MR. MCCARRICK:

10 Q Well, Mr. Davis, I can read it out loud to you.

11 MR. MCCARRICK: And, Your Honor, it's the first
12 tab in your binder. It's Page 92. It's Line 13 to 14.

13 BY MR. MCCARRICK:

14 Q And I'll represent to you that the question I asked
15 was:

16 Question: Okay --

17 THE COURT: I have it open and I see it. Go ahead
18 and put it in the record.

19 BY MR. MCCARRICK:

20 Q Okay. You were asked this question, and you gave this
21 answer Mr. Davis:

22 Question: Okay. Is CEL a worthless token?

23 Answer: The document speaks for itself, sir.

24 Does that sound familiar to you?

25 A What date is that document?

1 Q What day was that? That was two days ago when we spoke

2 --

3 A What date? No. What date is the tweet, sir?

4 Q Oh, the date of the tweet. Well, it was certainly
5 after the bankruptcy. Give me one moment. I can get that
6 for you. It looks like it's in October of 2022.

7 THE WITNESS: Objection, Your Honor, relevance.
8 Post-petition.

9 THE COURT: You agree then, that the Celsius token
10 is worthless post-petition?

11 THE WITNESS: I didn't think it was fully
12 worthless.

13 THE COURT: I'm asking -- I'm asking you a direct
14 question. Do you believe that the Celsius token is
15 worthless post-petition?

16 THE WITNESS: No.

17 BY MR. MCCARRICK:

18 Q Okay. Mr. Davis, that's what you wrote, though, in
19 October of 2022, correct, that Celsius is a bankrupt company
20 with a worthless token, right?

21 A I see that.

22 Q Is that more hyperbole?

23 A I wrote that. But Celsius cannot be worthless because
24 the market cap right now is -- I don't recall exactly what
25 it is, but I'm sure it's something like \$40 or \$50 million.

1 That is obviously not worthless. It is hyperbole.

2 Q Okay, and when I asked you, after you had told me that
3 the document speaks for itself, again, whether or not CEL
4 was worthless, you took the Fifth Amendment, didn't you?

5 A I don't recall what I said.

6 Q You don't recall what you said. Okay. Well, why don't
7 we bring back your deposition.

8 MR. MCCARRICK: And let's go to Pages 93, 24 to
9 94, 7. Can I have that, Mr. Lopez?

10 MR. LOPEZ: I have to log on (indiscernible) --

11 BY MR. MCCARRICK:

12 Q Okay. Well, I'll represent to you --

13 THE COURT: Just read him question and answer.

14 MR. MCCARRICK: Yes.

15 BY MR. MCCARRICK:

16 Q Question: Do you think that CEL is a worthless token
17 today?

18 Answer: I'll take the Fifth Amendment. Do you feel
19 better?

20 Does that sound familiar?

21 A It sounds familiar.

22 Q Yeah. That's what you said, isn't it?

23 THE COURT: Ask him the next --

24 THE WITNESS: You kept asking me the same question
25 over and over again and it was asked and answered.

1 MR. MCCARRICK: Let's go to Page 94. You're still
2 off, Mr. Lopez.

3 MR. LOPEZ: (indiscernible)

4 MR. MCCARRICK: Okay.

5 THE COURT: I'll read it to you, Mr. Davis. Page
6 94, Line 3: You're taking the Fifth Amendment on whether or
7 not you think CEL is a worthless token.

8 Answer on Line 6: Taking the Fifth about you
9 asking questions outside the petition date.

10 Question: Okay. Is it your position that CEL was
11 a worthless token on the petition date?

12 No.

13 Question: What changed between, in your view, why
14 is it worthless after the petition date, but not on the
15 petition date?

16 Answer: In my mind, after the petition date, you
17 can't use any utilities.

18 BY MR. MCCARRICK:

19 Q That was your testimony, right, Mr. Davis?

20 A Correct.

21 Q And so your testimony is that the reason you don't
22 think that CEL has value after the petition date is because
23 you're unable to use it anymore, correct?

24 A You can use CEL token for anything in DeFi, just like
25 you can use DOGE that has no utility, that has a \$5 billion

1 market cap.

2 Q Understood, Mr. Davis. I'm just asking when you say,
3 in my mind after the petition date, you can't use any
4 utilities, that's the reason you called it worthless after
5 the petition date?

6 A That was hyperbole, and that's what I said because you
7 can't use it. The platform is obviously paused, so you
8 can't take a loan. You can't get discount interest on
9 loans.

10 Q And that was true on the pause date as well, correct,
11 sir?

12 A As of June 13, 2022, no one could use utilities for
13 CEL.

14 Q Okay. I just have a few more questions, Mr. Davis.
15 Have you ever publicly threatened anyone in connection with
16 these Chapter 11 proceedings?

17 A I know what you're going to ask me. You asked me at my
18 deposition. But I don't consider that a threat.

19 MR. MCCARRICK: Okay. Well, let's look at it.
20 Let's go to Celsius Exhibit 94, and that's a tweet from
21 February 21, 2023.

22 Deanna, can you grant Mr. Lopez rights to share
23 his screen again?

24 CLERK: Judge, unfortunately, Deanna stepped away
25 from her desk, and I can't give rights. We'll have to wait

1 for her to return, unfortunately.

2 BY MR. MCCARRICK:

3 Q Okay. Well, Mr. Davis, you said that you know the
4 tweet that I'm referring to, correct?

5 A Correct.

6 Q Celsius Exhibit 94 is a Tweet you wrote on February 21,
7 2023, correct?

8 A Correct.

9 MR. MCCARRICK: And, Your Honor, just for your
10 reference, that's going to be Tab 5. Oh, no, I'm sorry,
11 it's not Tab 5 in the binder. We'll have to wait for Mr.
12 Lopez.

13 THE COURT: Okay.

14 BY MR. MCCARRICK:

15 Q Let me ask you just if you recall it. Do you recall
16 making the following post: the days are coming when we CEL
17 token holders will lift you up out of the water with butcher
18 hooks and the rest of you with fish hooks and then burn your
19 tabernacle to the ground for your error towards us CEL token
20 holders. Do you remember issuing that tweet?

21 A It's part of a Bible quote. I remember it.

22 Q Okay, and when I asked you who that tweet was directed
23 to, you refused to answer, correct?

24 A I think I refused to answer initially, and then I
25 answered. When you said, is it directed at White & Case, I

1 said no. It's not directed at White & Case. White & Case
2 and I had no beef at that point.

3 Q Well, who's it directed at, sir?

4 A It was directed at all the people that were attacking
5 CEL token holders.

6 Q And when you say attack CEL token holders, what do you
7 mean?

8 A The people on Twitter. All the people on Twitter that
9 are saying we deserve zero. You guys deserve nothing. Go
10 away. You're lucky you're getting something.

11 Q Okay. So it's your position --

12 A Told me to burn in hell.

13 MR. MCCARRICK: Your Honor, permission to approach
14 with copies of Exhibit 94. Thank you.

15 THE WITNESS: And these are the people that were
16 making threats towards CEL token holders.

17 BY MR. MCCARRICK:

18 Q Understood. I just want to clean up your testimony a
19 little bit. Is it your testimony that the people who need
20 to be hung by butcher and fish hooks are the people who
21 think that CEL has a value of zero?

22 A Sir, it was hyperbole, and they were threatening me,
23 telling me, you should burn in hell, go to hell. And as you
24 know, there are a lot of threats. Your firm and White &
25 Case have said the same thing, that you guys have to look

1 over your shoulders. We did, too. Same thing that was
2 going on at that point. We even brought it to the judge's
3 attention. People's lives are in danger. There are a lot
4 of threats. So I was pushing back on those threats. And I
5 don't know why you would think it was White & Case. I had
6 no beef with White & Case at that point.

7 MR. MCCARRICK: Okay. Your Honor, we'd move
8 Exhibit 94 into evidence.

9 THE COURT: Into evidence.

10 (Exhibit 94 admitted into evidence.)

11 MR. MCCARRICK: Thank you for your time, Mr.
12 Davis. To the extent the committee has any questions, I'll
13 pass the witness.

14 THE COURT: Mr. Colodny?

15 MR. COLODNY: No questions at this time, Your
16 Honor.

17 THE COURT: Anybody else wish to examine Mr.
18 Davis?

19 MR. KIRSANOV: Yes, Your Honor. Dmitry Kirsanov,
20 pro se.

21 THE COURT: Go ahead.

22 CROSS-EXAMINATION OF OTIS DAVIS

23 BY MR. KIRSANOV:

24 Q Mr. Davis, good afternoon.

25 A Good afternoon, Dmitry.

1 Q Mr. Davis, does dogecoin trade today?

2 A Yes, it does.

3 Q Mr. Davis, is dogecoin worthless?

4 A No, it's not.

5 Q Mr. Davis, do you know that expert witness Max Galka
6 obtained seed funding from Alameda Research?

7 MR. MCCARRICK: Objection.

8 THE COURT: Sustained.

9 THE WITNESS: Yes, I do.

10 THE COURT: Sustained. Strike the answer.

11 BY MR. KIRSANOV:

12 Q Mr. Davis, do you know that Alameda Research was FTX's
13 sister company?

14 A Yes, I do.

15 Q Mr. Davis, did you know that FTX was a competitor of
16 Celsius?

17 A Yes, it was.

18 Q Mr. Davis, do you think there was market manipulation
19 from competitors of Celsius?

20 MR. MCCARRICK: Objection.

21 THE WITNESS: Please repeat the question. I
22 didn't hear all of the question.

23 MR. KIRSANOV: Certainly.

24 BY MR. KIRSANOV:

25 Q Mr. Davis, do you think there was market manipulation

1 from the competitors of Celsius?

2 A Yes.

3 Q Mr. Davis, is the CEL token traded today?

4 A Yes, it is.

5 Q Mr. Davis, has CEL token been traded after bankruptcy?

6 A Yes, it has.

7 Q Mr. Davis, did you have loans on Celsius?

8 A Yes, I did.

9 Q Mr. Davis, did all your loans get liquidated?

10 A Yes, they did.

11 Q Mr. Davis, did your CEL from liquidation go to your
12 custody wallet?

13 A Yes, it did. I believe 54,000 CEL tokens went to my
14 custody wallet.

15 Q I see. Mr. Davis, did you know the Chapter 7
16 liquidation rates across --

17 MR. MCCARRICK: Objection.

18 THE COURT: Sustained. Ask another question, Mr.
19 Kirsanov.

20 THE WITNESS: I didn't -- I didn't hear the
21 question.

22 BY MR. KIRSANOV:

23 Q Mr. Davis, do you know the liquidation for your Earn
24 claim on your CEL tokens?

25 MR. MCCARRICK: Objection, Your Honor.

1 THE COURT: Sustained.

2 THE WITNESS: Eighty-one cents.

3 THE COURT: Sustained.

4 BY MR. KIRSANOV:

5 Q Mr. Davis, do you think you are receiving fair value in
6 comparison to your Earn from your custody class?

7 MR. MCCARRICK: Objection, Your Honor.

8 THE WITNESS: No, I do not.

9 BY MR. KIRSANOV:

10 Q Mr. Davis, are you aware of deactivation day pricing?

11 A Please explain it to me what it means.

12 MR. KIRSANOV: I'd like to open to the plan, Page
13 3000 -- I'm sorry, Docket 3000 --

14 MR. COLODNY: Objection. He's testifying.

15 THE COURT: Sustained.

16 MR. KIRSANOV: Can we open the plan up to the
17 witness, please?

18 THE COURT: No. If you wish to cross-examine, you
19 have to post the exhibits that you wish to use in
20 examination.

21 BY MR. KIRSANOV:

22 Q Okay. Mr. Davis, have you been intimidated relating to
23 the CEL token?

24 A Yes, I have.

25 Q Have you been threatened in relation to the CEL token?

1 A Yes, I have.

2 MR. KIRSANOV: I have no further questions, Your
3 Honor. Thank you.

4 THE COURT: Thank you, Mr. Kirsanov.
5 Anybody else wish to cross-examine?

6 MR. FRISHBERG: I do. Daniel Frishberg, pro se.

7 THE COURT: Mr. Frishberg, go ahead.

8 CROSS-EXAMINATION OF OTIS DAVIS

9 BY MR. FRISHBERG:

10 Q Mr. Davis, do you recall being in a Twitter Space where
11 you said in reference to me that, quote, "Motherfuckers will
12 hunt you down."

13 A Play the recording. I don't recall that.

14 MR. FRISHBERG: Your Honor, may I admit the
15 recording into evidence?

16 MS. CORNELL: Your Honor, this is Shara Cornell,
17 with the Office of the United States Trustee. I object to
18 the relevance and hearsay.

19 THE COURT: Yeah. Sustained.

20 MS. CORNELL: Thank you.

21 THE COURT: Mr. Frishberg --

22 MR. FRISHBERG: No further questions.

23 THE COURT: Mr. Frishberg, let me just say this.

24 There have been, in my view, inappropriate things that have
25 been said, directed at creditors, directed at the creditors'

1 committee counsel, directed at the Court, directed at the
2 debtor's counsel.

3 On several occasions I've contacted the U.S.
4 marshals or the U.S. trustee to report episodes. I think at
5 this stage, and I know it occurred. I think it's
6 unfortunate. I think feelings were very high. People lost
7 a lot of money. People felt deceived. And it can't excuse
8 what I perceive to be serious, inappropriate behavior in
9 connection with a bankruptcy case.

10 What I'd like to do, Mr. Frishberg, is try and
11 keep this going forward directed at the issues that the
12 Court is going to have to resolve. So I understand your
13 strong feelings, Mr. Frishberg. I'm aware of things that
14 happened in the past. I want to try and keep it on the
15 scope of the direct examination and cross-examination. So
16 I'm going to sustain my own objection to that, Mr.
17 Frishberg. But if there are other questions you want to ask
18 that go to the testimony you've heard, I'll certainly permit
19 that.

20 MR. FRISHBERG: I do not. Thank you, Your Honor.

21 THE COURT: Thanks, Mr. Frishberg.

22 Is there anybody else who wishes to examine the
23 witness, Mr. Davis?

24 MR. IOVINE: Yes, Mr. -- Judge Glenn. I'm sorry.
25 Jason Iovine, pro state creditor.

1 THE COURT: Okay. Go ahead, Mr. Iovine.

2 CROSS-EXAMINATION OF OTIS DAVIS

3 BY MR. IOVINE:

4 Q Mr. Davis, good afternoon.

5 A Good afternoon, sir.

6 Q Real quick questions. Was CEL token able to be used
7 outside of Celsius?

8 A Yes.

9 Q Do you recall which platforms allowed this?

10 A FTX, OKX and I believe Gate.io post-petition.

11 Q Do you remember any decentralized platform finance
12 platforms that allowed it?

13 A Uniswap was the main one.

14 Q Do you recall (indiscernible) or (indiscernible)?

15 A Yes.

16 Q And what were you able to do, if you know, with CEL
17 token on those platforms?

18 A I think you can post your CEL token as collateral on
19 those platforms.

20 Q So CEL token wasn't dependent strictly on Celsius?

21 A No. You can also use it in DeFi.

22 MR. IOVINE: Thank you. All my questions.

23 THE COURT: Thank you very much, Mr. Iovine.

24 Anybody else? All right. Thank you very much, Mr. Davis.

25 So I will consider -- again your direct examination wasn't

1 really in the proper form. I will evaluate, I'm going to
2 admit it in evidence and give it such weight as I think it's
3 entitled to under the circumstances, and I appreciate your
4 cross-examination.

5 The issue arose about you sitting for a
6 deposition, and the Court had entered an order. I'm pleased
7 that you did cooperate and that your deposition was taken.
8 And thank you for your testimony and your statements. All
9 right.

10 MR. DAVIS: You are very welcome, Your Honor.

11 THE COURT: Okay. Mr. Ubierna, you're next.

12 MR. UBIERNA DE LAS HERAS: Good afternoon, Your
13 Honor. Can you hear me okay?

14 THE COURT: Yeah, I can hear you okay, Mr.
15 Ubierna.

16 MR. UBIERNA DE LAS HERAS: Okay. Victor Ubierna
17 de las Heras, pro se creditor. I don't have any evidentiary
18 presentation for today, Your Honor. I only restate what I
19 said at the opening statement of the confirmation hearing,
20 and I don't have anything for today. Thank you for your
21 time.

22 THE COURT: Thank you very much, Mr. Ubierna. All
23 right. The next on my list are the securities plaintiffs.
24 I have them listed separately. But who is their counsel?

25 MR. KHEZRI: Good afternoon, Your Honor. Phil

1 Khezri, Lowenstein Sandler, on behalf of the securities
2 plaintiffs.

3 THE COURT: Thanks, Mr. Khezri.

4 MR. KHEZRI: I'm going to be very brief.

5 THE COURT: Go ahead.

6 MR. KHEZRI: We filed a limited objection, which
7 appears at Docket Number 3544. Securities plaintiffs appear
8 to fall within the class of subordinated claims under
9 510(b). Limited objection seeks to preserve rights to
10 pursue recovery from Side C coverage of any applicable
11 insurance policies. We are in discussion with the debtors
12 about adding language to the confirmation order to resolve
13 the objection. So hopefully, this can just be kicked out
14 pending resolution.

15 THE COURT: All right. Thanks very much, Mr.
16 Khezri. All right. David Schneider? Mr. Schneider, are
17 you on Zoom?

18 MR. SCHNEIDER: Can you hear me now, sir?

19 THE COURT: Okay, Mr. Schneider. I can hear you.
20 Go ahead.

21 MR. SCHNEIDER: Okay. I'm sorry. I'm on phone
22 using my phone.

23 THE COURT: Okay. Go ahead. That's all right.

24 MR. SCHNEIDER: David Schneider, and -- creditor.
25 And I would also like to request to be moved to a later

1 order position because --

2 THE COURT: I'm sorry. I couldn't hear that. I
3 couldn't hear that, Mr. Schneider. Just say that again. I
4 heard you were requesting something, but I couldn't hear
5 what.

6 MR. SCHNEIDER: I would also like to request to be
7 moved to a later order position as far as presenting my
8 testimony -- presenting my exhibit --

9 MR. MCCARRICK: TJ McCarrick, Kirkland & Ellis, on
10 behalf of the debtors. I think Mr. Schneider is asking to
11 be put later in the order.

12 THE COURT: Okay. Mr. Schneider, I'll put you at
13 the end. It'll give you a little more time. Okay.

14 MR. SCHNEIDER: Thank you very much, Your Honor.

15 THE COURT: All right. Mr. Phillips?

16 MR. PHILLIPS: Yes, Your Honor. Well, I guess I'd
17 prefer -- I thought I would go tomorrow, and so I'd prefer
18 to do later as well, but if necessary, I'll proceed. I did
19 put in my request to appear remotely at Docket Number 3648.

20 THE COURT: All right. And you were deposed?

21 MR. PHILLIPS: I was deposed yesterday for four
22 hours.

23 THE COURT: Okay.

24 MR. PHILLIPS: By both debtor and committee
25 counsel.

1 THE COURT: Well, let me ask the debtor and the
2 committee, is there any objection to Mr. Phillips testifying
3 remotely?

4 MR. WEEDMAN: Your Honor, I think with the same
5 reservations that we discussed earlier, not necessarily to
6 the remoteness, but we do have overall objections to his
7 declaration being admitted into evidence. We think it's
8 just a wholesale adoption of his argument put into a
9 declaration form, and so we would -- but we're prepared to
10 go forward with a cross-examination.

11 THE COURT: I'll give it such weight as I think
12 it's entitled to. We always have this issue about mixing
13 argument and evidence. But go ahead, Mr. Phillips, if you
14 want to --

15 MR. WEEDMAN: Your Honor, if I may just --

16 THE COURT: Well, let Mr. Phillips. Just be brief
17 and summarize what your objections are and then we'll permit
18 -- are you going to cross-examine?

19 MR. WEEDMAN: We are, Your Honor. I was just
20 going to note that I think counsel for Perella Weinberg was
21 going to dial in when he knew that Mr. Phillips was joining.
22 We've kind of gone a lot faster than we expected.

23 THE COURT: Yeah.

24 MR. WEEDMAN: So we --

25 THE COURT: I'll tell you what. I have on my

1 watch 3:59, so 4:00. Let's take a recess until 4:15.

2 MR. WEEDMAN: Thank you, Your Honor.

3 THE COURT: Okay, and then we'll -- so, Mr.

4 Phillips, we'll be back and you can remain on the line.

5 We're taking a break of 15 minutes, and you can contact

6 Perella. Okay?

7 MR. WEEDMAN: Thank you, Your Honor.

8 MR. PHILLIPS: Yes, Your Honor. Thank you very

9 much.

10 THE COURT: Thank you.

11 (Recess)

12 THE COURT: Please be seated. All right. Are we
13 ready to proceed with Mr. Phillips's examination?

14 MR. WEEDMAN: Yes, Your Honor.

15 THE COURT: All right. Mr. Phillips, do you want
16 to briefly -- I mean, I'm going to admit your direct
17 testimony. Let me ask you, are you a lawyer, Mr. Phillips?

18 MR. PHILLIPS: No, sir.

19 THE COURT: All right. I'm trying to bend over
20 backwards not to strictly apply the rules of evidence. I'm
21 admitting things in evidence where I think the substance is
22 important to be heard. I'll give it such weight as I think
23 is appropriate. You've been deposed. So I'll give you a
24 chance if you want to say anything briefly, and then I'll
25 turn it over for cross-examination.

1 MR. PHILLIPS: Thank you, Your Honor. I am a
2 little confused, Your Honor, about testifying to my
3 declaration as opposed to providing argument, how you want
4 to handle that.

5 THE COURT: Well, I'll give you a chance if you
6 want to summarize. Some of what was in your declaration is
7 really argument in a sense. I'll give you a chance if you
8 want to just summarize your argument and then in terms of
9 cross-examination, I'll turn it over to counsel to the
10 committee for it. But before I ask for cross-examination, I
11 thought I would give you a chance, if there's anything that
12 you want to raise.

13 MR. PHILLIPS: Thank you, Your Honor.

14 THE COURT: Did we swear Mr. Phillips?

15 CLERK: I did not.

16 THE COURT: Let's do this. Let me have you sworn
17 at this point so I don't forget. Karen, our ECRO operator,
18 keeps me on the straight and narrow to make sure that I
19 always make sure that all witnesses have been sworn. So if
20 you would raise your right hand, Karen is going to go ahead
21 and administer the oath.

22 CLERK: Do you solidly swear or affirm that all
23 the testimony you're about to give before this Court is the
24 truth, the whole truth and nothing but the truth?

25 MR. PHILLIPS: Yes.

1 THE COURT: All right. Thank you, Mr. Phillips.
2 All right. So is there anything you wanted to summarize
3 before? And I have your statement. I've read it. But if
4 there's anything that you wanted to add orally, I'll permit
5 you to do that.

6 MR. PHILLIPS: Well, just in brief outline, if I
7 could, I did file my original objection at 3548 and 3557 on
8 the docket, the remote request at 3648. I added some
9 amended exhibits which I used in cross at 3706. I then
10 filed a declaration at 3758, which I'd like to submit into
11 evidence. And I also filed a rebuttal argument that relied
12 in part on the declaration at 3705. I filed the rebuttal at
13 3767 and that relied in part on the declaration at 3705. I
14 have not responded to all the exhibits that were filed late
15 last night by both the debtor and UCC. And I do have
16 objections to some of the UCC exhibits, should they be used.

17 THE COURT: All right.

18 MR. PHILLIPS: So my fundamental argument is this,
19 right, which is that the professionals in this case who are
20 representing the committee, both White & Case and Perella,
21 should be accountable. And I believe that there's evidence
22 of misconduct in both the appointment of the litigation
23 oversight committee as well as the board.

24 And I think that given especially the speed at
25 which this confirmation hearing is proceeding and the

1 limited amount of discovery that was available, especially
2 since some of the facts and circumstances did not become
3 apparent until post the discovery schedule that was laid out
4 at the beginning of the hearing, which really it was laid
5 out, in my opinion, to support the CEL valuation argument
6 that we just heard, that complete discovery and
7 investigation wasn't able to occur.

8 So therefore, those claims should be preserved
9 post the effective date, that an appropriate fiduciary
10 should be unable to prosecute those behaviors, those claims
11 essentially on behalf of the UCC, the committee itself and
12 that I'd propose two separate ones that for that fiduciary
13 would either be a subset of the litigation oversight
14 committee who is unconflicted and not a witness. And that
15 would be the three members, Mr. Adler, Mr. Crews and Ms.
16 O'Connor or that the U.S. trustee would appoint such a
17 fiduciary, that if Your Honor saw fit, given to the
18 circumstances of the misconduct, that he would remove Mr.
19 Aidoo from the board of NewCo and vacate the appointments
20 essentially from the board of NewCo of Mr. Aidoo and of Mr.
21 Jindal, Mr. Uzzi and Mr. Noyes from the litigation oversight
22 committee.

23 And then the separate part of my declaration,
24 which relies in part on my qualification, is regarding the
25 valuations that were presented during the debtor's case by

1 experts from three different firms, Mr. Kielty on behalf of
2 Centerview, Mr. Cohen on behalf of behalf of Stout Risius
3 Ross and by Mr. Campagna on behalf of Alvarez & Marsal. And
4 in my opinion, their valuation of the orderly winddown
5 versus NewCo was in error. And I provided an updated
6 valuation of NewCo, showing that its recovery percentage is
7 lower than that of the orderly winddown scenario, both of
8 which scenarios are included under the plan, and thus that
9 the debtors and committee should be directed to carry out
10 their fiduciary duties and evaluate the current value of
11 both the recovery of NewCo and orderly winddown and to make
12 the proper determination to toggle through orderly winddown
13 because it's important to note that all the valuation work
14 that has been done to date and presented in the disclosure
15 statement, which was approved but has some inadequacies, as
16 I will point out.

17 But I did not object to it at the time, but was
18 done as of a stale valuation date of May 31, 2023, which was
19 neither current with the disclosure statement approval,
20 which was late August, nor is it current now, especially
21 true in light of the volatility, for example, of Bitcoin
22 Microsoft prices, which are the key comp set that Mr. Kielty
23 used in evaluating (indiscernible). So that's my brief
24 summary, Your Honor.

25 THE COURT: Okay. All right. All right. Cross-

1 examination.

2 MR. WEEDMAN: Thank you, Your Honor. Your Honor,
3 Joshua Weedman, White & Case LLP, on behalf of the
4 committee. May I approach, Your Honor?

5 THE COURT: Yes, you can. Thank you.

6 CROSS-EXAMINATION OF RICHARD PHILLIPS

7 BY MR. WEEDMAN:

8 Q Good afternoon, Mr. Phillips.

9 A Good afternoon, Mr. Weedman.

10 Q You applied to be on the board of NewCo, right?

11 A Yes.

12 Q And you submitted your application well in advance of
13 the process being formally announced, right?

14 A I don't remember exactly the formal date of
15 announcement, but I started expressing my interest
16 (indiscernible) I believe of this year.

17 Q I'm sorry. I couldn't hear you. Could you please
18 repeat that?

19 A Sure. I don't remember the date of the "formal"
20 announcement of the process because I'm not sure there was a
21 date of formal announcement of when the process was
22 launched, but I believe I submitted my, you know, and
23 started indicating interest in March of this year.

24 Q Okay. In March of 2023, correct?

25 A Correct.

1 Q And when you submitted your application, you submitted
2 it pseudonymously, right? Under a pseudonym?

3 A Yes.

4 Q And you were told that the use of a pseudonym on your
5 resume was a problem, right?

6 A Well, the committee members who co-chaired it knew who
7 I was because they were able to identify my LinkedIn profile
8 from the pseudonymous resume.

9 Q And my question was, you were told that the use of a
10 pseudonym was a problem for your resume, correct?

11 A That is what Mr. Colodny told me, yes.

12 Q And eventually you did send a resume with your name,
13 correct?

14 A Yes.

15 Q And that was in around June or July of 2023, right?
16 Correct.

17 Q And you've never previously served on the board of a
18 publicly traded company, right?

19 A Correct.

20 Q But you were still interviewed for a seat on NewCo's
21 board, right?

22 A Yes, on approximately August 30th.

23 Q That was my next question. You were interviewed on
24 August 30th, right?

25 A I just said so.

1 Q And that interview was approximately one hour?

2 A Yes, it was.

3 Q And you recall being asked questions during that
4 interview, right?

5 A I do.

6 Q And you vaguely recollect that you were told that you
7 were being asked the same series of questions that were
8 being asked of all board applicants, right?

9 A Well, I believe what occurred in the depo, and I'm sure
10 you have the testimony, is you stated that there were five
11 standard questions that were asked, and that I was asked
12 that. And I couldn't recall that I was specifically asked
13 about five standard questions that were there. But I
14 vaguely recall being told that I was being asked similar
15 questions. But there were clearly some questions that were
16 not asked of all applicants.

17 MR. WEEDMAN: And if I could ask Mr. Lopez to
18 please bring up UCC Exhibit 237.

19 THE WITNESS: Objection, Your Honor.

20 THE COURT: You can't object to his putting up an
21 exhibit on the screen. When he asks you some questions,
22 we'll see if there's an objection.

23 THE WITNESS: Okay.

24 MR. WEEDMAN: And Your Honor, this is in your
25 binder under Tab 3C, as in Charlie. I'm sorry, 3D.

1 THE COURT: Okay.

2 BY MR. WEEDMAN:

3 Q And Mr. Phillips, you see on this is an email from an
4 email address celbk7@proton.me. Do you see that?

5 A Yes.

6 THE WITNESS: And I still object to this email
7 being brought here, Your Honor.

8 BY MR. WEEDMAN:

9 Q I'm still asking some questions about this, Mr.
10 Phillips. Is that your email address?

11 A Yes.

12 MR. RICHARDS: Your Honor, I object. He's not
13 aware of this exhibit.

14 THE COURT: Overruled. Go on with your questions.

15 BY MR. WEEDMAN:

16 Q And this is an email that you sent on August 30, 2023
17 at 6:12 p.m. to Aaron Colodny, at White & Case, correct?

18 A That is what it says, so, yes.

19 Q And you remember sending this email, don't you?

20 A Yes.

21 MR. WEEDMAN: Your Honor, I would offer Exhibit
22 237 into evidence.

23 THE COURT: Any objections?

24 THE WITNESS: Objection. Objection, Your Honor.

25 MR. RICHARDS: I object.

1 THE COURT: What's the objection?

2 MR. RICHARDS: He's not (indiscernible) this
3 exhibit.

4 THE COURT: One at a time. First, Mr. Richards.
5 Mr. Phillips, I'm sorry.

6 MR. PHILLIPS: Thank you, Your Honor. This
7 applies to the whole series of emails that Mr. Weedman may
8 or may not introduce here, in that they're out of context.
9 And so I would like to introduce the full email train,
10 thread that includes all the emails and the particular that
11 that one is taken from.

12 THE COURT: You acknowledge this is an email that
13 you sent to Mr. Colodny on Wednesday, August 30, 2023, at
14 6:12 p.m.; is that correct?

15 THE WITNESS: Yes, and he responded to at 10:23
16 the same night.

17 THE COURT: Objections is overruled. It's in
18 evidence.

19 (Exhibit 237 admitted into evidence.)

20 MR. WEEDMAN: Thank you.

21 BY MR. WEEDMAN:

22 Q And, Mr. Phillips, in this email to Mr. Colodny, of
23 White & Case, you said, thanks for taking the time to
24 interview me and meet over Zoom. You see that?

25 A Yes.

1 Q And you also say, I appreciate the ups you gave me. Do
2 you see that?

3 A Yes.

4 Q And when you said appreciate the ups, you were thanking
5 Mr. Colodny for speaking favorably about you during the Zoom
6 meeting. Isn't that correct?

7 A Yes.

8 Q And so, as of August 30, 2023, you thought Mr. Colodny
9 had been speaking favorably about you, correct?

10 THE WITNESS: Misstates the testimony. So I'll
11 object on that ground.

12 THE COURT: Can you answer the question yes or no?
13 The objection is overruled.

14 THE WITNESS: So yes, he did, but it was only
15 solely on that date.

16 BY MR. WEEDMAN:

17 Q And in fact, you'd had many conversations with Mr.
18 Colodny before August 30th, correct?

19 A Yes.

20 Q And those had spanned over the course of many months,
21 correct?

22 A Since probably -- yes.

23 MR. WEEDMAN: Can I ask Mr. Lopez to please bring
24 up UCC Exhibit Number 236?

25 BY MR. WEEDMAN:

1 Q And, Mr. Phillips, you see this is another email from
2 your email address, celbk7@proton.me, dated Friday, August
3 25, 2023, at 10:14 a.m. Do you see that?

4 A Yes.

5 Q And this is another email you sent to Mr. Colodny, of
6 White & Case, with a subject line, "Good Job and Some Follow
7 Up." Do you see that?

8 A Yes.

9 Q And you recall sending this email to Mr. Colodny as
10 well, correct?

11 A Yes.

12 MR. WEEDMAN: Your Honor, I would offer in UCC
13 Exhibit Number 236 into evidence.

14 THE COURT: Any objections?

15 THE WITNESS: Same objection, that it's part of an
16 email thread, so I would like to -- can I submit the whole
17 thread as rebuttal evidence?

18 THE COURT: Well, I take -- I rule one at a time.

19 THE WITNESS: Fair enough.

20 THE COURT: Objection's overruled. It's admitted.
21 236 is admitted into evidence.

22 (Exhibit 236 admitted into evidence.)

23 BY MR. WEEDMAN:

24 Q And again, Mr. Phillips, this is you on August 25,
25 2023, telling Mr. Colodny in the first sentence, great job

1 on the spaces. Do you see that?

2 A Yes.

3 Q Is that a reference to Twitter Spaces that Mr. Colodny
4 had hosted?

5 A Yes.

6 Q And I'm going to direct your attention to the last
7 paragraph of this email. You say to Mr. Colodny, of White &
8 Case: Thank you. I really do appreciate all the hard work
9 you and your team have put into the case. I'm probably one
10 of the few in the creditor community that truly understand
11 how much work these engagements are and the sacrifices they
12 require on the work-life balance front. If we exit prior to
13 the end of the year, I'll try to get you to a Chargers game
14 at SoFi, the yolo incentive plan. Think the Chiefs and the
15 Bills are the final two games, so they could be important
16 and exciting. Did I read that correctly?

17 A Yes.

18 Q And again, this is you on August 25th thanking Mr.
19 Colodny for what you've described as a good job and all the
20 hard work that he put into the case, correct?

21 A Correct.

22 Q Shortly after these two emails that we just reviewed,
23 you learned you weren't selected for the NewCo's board,
24 correct?

25 A Define shortly.

1 Q How about September 4, 2023?

2 A Yes.

3 Q And you learned who had been selected, correct?

4 A Yes.

5 Q And you were upset learning that the board included
6 someone named Emmanuel Aidoo over you, correct?

7 A Not at that time. I would not characterize, you know,
8 I would --

9 THE WITNESS: Well, again, object, misstates
10 testimony. I would more characterize my feeling at that
11 time as disappointed that I was not selected.

12 BY MR. WEEDMAN:

13 Q I'm going to show you what is marked as UCC Exhibit
14 Number 238. Mr. Phillips, this is an email chain. If we
15 scroll down to the bottom, it's an email that you sent again
16 from your email address, celbk7@proton.me, on September 4,
17 14, 2023 at 3:48 p.m., to Aaron Colodny, Gregory Pesce,
18 Keith Wafford, Scott Duffy, and Thomas DiFiore. Do you see
19 that?

20 A Yes.

21 Q And you recall sending this email, correct?

22 A Yes.

23 Q And the subject line of this email says "Board
24 Diversity Requirements UCC Only Needs ONE," and one is in
25 all caps, correct?

1 A Yes, and I appreciate you increasing the magnification
2 so I can read it.

3 Q And by one in all caps, you were referring to a diverse
4 member of the board, correct?

5 A Yes.

6 Q And you sent this email because you were worried that
7 Mr. Aidoo had been selected for diversity requirements,
8 correct?

9 A No.

10 Q I'm sorry. You said that's not -- are you saying no to
11 that?

12 A I did.

13 Q Can I please direct you to your deposition that was
14 taken yesterday?

15 MR. WEEDMAN: I'd ask Mr. Lopez to bring up Mr.
16 Phillips' deposition, Page 49. And, Your Honor, this is Tab
17 4 in your binder.

18 THE COURT: I have it open. What line number?

19 MR. WEEDMAN: And I'm going to read, Your Honor,
20 from Line 6 to 16.

21 THE COURT: Okay.

22 MR. WEEDMAN: And the question, you say --

23 THE COURT: I think you're starting in the wrong
24 place.

25 MR. WEEDMAN: Oh, I'm sorry. Page 48. Thank you.

1 BY MR. WEEDMAN:

2 Q And so the only thing I couldn't -- I couldn't
3 understand why and so I thought that they may perceive that
4 they needed him for diversity requirements. And so I wrote
5 that, that, you know, because of Mr. Genoot meeting those
6 diversity requirements, they didn't need anybody else as
7 long as they kept Ms. LaPuma. And I was not aware that
8 there was another director, apparently, that also met
9 diversity requirements.

10 Do you see that?

11 A I do.

12 Q Is that testimony that you gave under oath yesterday?

13 A It is. And also I don't see the prior transcript, so I
14 don't know if there was an objection. I saw that there was
15 an objection in the other page. I don't know if there was
16 an objection on the record prior to this statement.

17 Q Mr. Phillips, you agree you did not participate in the
18 committee's deliberations regarding the board composition?

19 A I agree, yes.

20 Q I'm sorry. You cut out.

21 A I said I do agree with that, yes.

22 MR. WEEDMAN: And Your Honor, I would like to move
23 UCC Exhibit 238 into evidence.

24 THE WITNESS: I'm sorry, Your Honor. For
25 clarification, is that the whole transcript or what is UCC

1 Exhibit 238?

2 THE COURT: He hasn't moved -- he moved the
3 emails. UCC 238 was an email chain.

4 THE WITNESS: The August 30th email?

5 THE COURT: The top of the list says Email 3, but
6 this is ECF 3706, Pages 9 and 10 are what are included here.

7 THE WITNESS: Okay. Thank you, Your Honor.

8 THE COURT: All right. Are there any objections?
9 All right. Exhibit 238 is admitted into evidence.

10 (Exhibit 239 admitted into evidence.)

11 MR. WEEDMAN: Thank you, Your Honor.

12 BY MR. WEEDMAN:

13 Q Shortly after you found out that you had not been
14 selected for the NewCo board, you filed a limited objection
15 on September 22nd, correct?

16 A I believe it was September 21st when I submitted it,
17 but it appeared on the docket on September 22nd.

18 Q And one of the objections that you lodged in your
19 limited objection from September related to White & Case and
20 Perella Weinberg's conduct in the board selection process,
21 correct?

22 A Yes.

23 Q And in particular you object to the exculpation of
24 White & Case and Perella Weinberg, correct?

25 A Correct.

1 Q And that's because you believed that creditors,
2 including yourself, should be able to sue those two
3 companies regarding the board selection process, correct?

4 A And the fiduciary appointed on behalf of the UCC goes
5 out of business on the effective date.

6 Q And you agree with me that you probably would have not
7 filed that objection if you had been selected to the Board,
8 right?

9 A Yes.

10 MR. WEEDMAN: I have no further questions, Your
11 Honor.

12 THE COURT: Any other examination?

13 MR. BRIER: Yes, Your Honor.

14 THE COURT: Okay, Ms. Brier.

15 MS. BRIER: Grace Brier, Kirkland & Ellis, on
16 behalf of Debtors.

17 CROSS-EXAMINATION OF RICHARD PHILLIPS

18 BY MS. BRIER:

19 Q Good afternoon, Mr. Phillips.

20 A Good afternoon, Ms. Brier.

21 Q I saw you pretty recently. Welcome.

22 A We did.

23 Q Mr. Phillips, you submitted a ballot in this case
24 regarding the plan, correct?

25 A I did.

1 Q And you voted to approve the plan when you submitted
2 your ballot, correct?

3 A I did.

4 Q And you submitted that in September of 2023?

5 A I did. I submitted that ballot either the last day or
6 the day before the end of the voting period, on the -- I
7 think it was September 22nd.

8 Q I would like to talk about some of your early
9 involvement in this case. You signed an NDA to listen in on
10 the auction proceedings, right?

11 A I did.

12 MS. BRIER: Your Honor, permission to approach
13 with Celsius Exhibit 118?

14 THE COURT: Sure.

15 MS. BRIER: Mr. Lopez, if you could please pull
16 that up.

17 THE COURT: Thank you.

18 MS. BRIER: All right. And if you could please
19 zoom in on that first tweet, Mr. Lopez.

20 BY MS. BRIER:

21 Q Mr. Phillips, this is a tweet from your. Your Twitter
22 handle is @cryptoyolo7, correct?

23 A Yes.

24 Q And in May 2023, you tweeted, "It's official. The
25 winner is @farenheithldg @arrington. Significant work to

1 improve the value of @CelsiusNetwork mining operations for
2 #Celsians @CelsiusUCC and reductions in overall management
3 fees, #auctionswork." Right?

4 A Yes.

5 Q Now, as a result of the things that you learned and saw
6 while observing the auction, you thought the Celsius auction
7 involved significant work to improve the value of the
8 Celsius Network mining operations, correct?

9 A I would rephrase that. I think that taking a 140-
10 character tweet does not summarize my thoughts. It just
11 says the length of 140 characters. So first off, the
12 transcript was essentially public at that point. The
13 transcript was publicized. And I referred to the Stretto
14 filing here. So I based it essentially on the Stretto
15 filing, not on listening in on the auction. But it was
16 clear that the resulting final bid as described in that
17 Stretto filing was better than the stalking horse bid that
18 existed at the beginning of the auction process from
19 NovaWulf and that's why I tweeted this.

20 Q And you tweeted on May 25th, 2023, "Significant work to
21 improve the value of the mining operations." True?

22 A Yes.

23 MS. BRIER: Your Honor, permission to move into
24 evidence Celsius Exhibit 118.

25 THE COURT: I'm sorry, say it again.

1 MS. BRIER: Celsius Exhibit 118, the tweet.

2 Permission to move into evidence.

3 THE COURT: All right. Any objections?

4 THE WITNESS: That's this tweet, correct, Ms.
5 Brier?

6 THE COURT: Yes, this tweet. Exhibit 118 is
7 admitted in evidence.

8 (Exhibit 118 admitted into evidence)

9 BY MS. BRIER:

10 Q And, Mr. Phillips, as a result of the things that you
11 learned and you saw and you knew about the auction, you
12 tweeted, "#AuctionsWork". Right?

13 THE WITNESS: Objection. Misstates testimony.

14 MS. BRIER: My question is did you tweet
15 "#AuctionsWork" based on what you knew and learned and saw
16 about the auction?

17 THE WITNESS: Objection. Misstates testimony.

18 THE COURT: Could you just answer the question,
19 Mr. Phillips?

20 THE WITNESS: Sure.

21 THE COURT: You can answer it yes or no.

22 BY MS. BRIER:

23 A Well, no based on how she phrased it.

24 Q All right. On --

25 A I tweeted "Auctions Work" based on the two public

1 filings, one post-auction and the NovaWulf stalking horse
2 pre-auction.

3 Q So let's do it this way. Based on the public filings
4 that you saw, you tweeted #AuctionsWork on May 25th, 2023,
5 right?

6 A Yes.

7 Q Now, since that time, May 25th, 2023, you've applied to
8 be a member of the NewCo board, right?

9 THE WITNESS: Asked and answered.

10 THE COURT: Mr. Phillips.

11 THE WITNESS: Yes.

12 THE COURT: Look, let's stop fencing. We're going
13 to get through this a lot faster if she asks questions, you
14 can answer the questions. Okay?

15 BY MS. BRIER:

16 Q I'll ask that again. You applied to serve as a member
17 of the NewCo board since this time in May 25th, 2023, right?

18 A Yes.

19 Q And you were not selected for the board, right?

20 A Yes.

21 THE COURT: I mean, that's established already.
22 Let's move on.

23 BY MS. BRIER:

24 Q Now, after you weren't selected, you filed some
25 objections. And I would like to talk about those. Mr.

1 Phillips, you submitted a valuation to the Court as part of
2 a recent declaration. Now, that valuation wasn't included
3 in your original declaration, true?

4 A Yes.

5 Q And you're not offering an expert opinion in this
6 matter, correct?

7 A No.

8 Q But you offered some valuation statements in your
9 declaration that you filed with the Court, correct?

10 A Yes. But I am an expert.

11 Q Your testimony is that you're an expert?

12 A Absolutely.

13 THE COURT: Well, you haven't been -- you didn't
14 lay the foundation for expertise. I'm not hearing the
15 expert opinions. Go on with your examination. He's not
16 testifying as an expert.

17 THE WITNESS: Your Honor?

18 THE COURT: No. I'm sorry. You did not -- you're
19 being examined as a fact witness. You put in your
20 declarations as a fact witness. I understand your
21 background with Houlihan Lokey and others. You're not
22 testifying here as an expert. Ask questions of the witness
23 and let's get answers and let's move on.

24 MS. BRIER: Thank you, Your Honor. In Tab 2 of
25 the binder that the UCC handed up, which is also Celsius

1 Exhibit 81 -- I'm happy to bring up a copy, but I think that
2 it's the exact same document.

3 THE COURT: This is in the (indiscernible) binder?

4 MS. BRIER: Oh, no. This is a copy of Mr.
5 Phillips declaration. I'll just bring this up. And, Mr.
6 Lopez, if you could please pull up Exhibit 81. And turn to
7 the next page.

8 BY MS. BRIER:

9 Q Mr. Phillips, this is the declaration you filed,
10 correct?

11 A Yes.

12 Q And on the last page, Page 28, you offer a valuation
13 hearing, right?

14 A Yes.

15 Q And in that valuation, you take two discounts to the
16 total NewCo number of \$1.2 billion, correct?

17 A Can you repeat the question, please?

18 Q Sure. That was a confusing one. You take two
19 different --

20 THE COURT: Let's make sure I'm -- you're looking
21 at Exhibit E, the last page of this page, 28 of 28?

22 MS. BRIER: Exactly.

23 THE COURT: All right. Go ahead.

24 BY MS. BRIER:

25 Q And, Mr. Phillips, this is a valuation that you

1 yourself prepared, right?

2 A Yes.

3 Q And what you did was you took two different discounts
4 to the total valuation that was included in the disclosure
5 statement for NewCo at \$1.2 billion, correct?

6 A Yes.

7 Q And one of those discounts was a Holdco discount at 7.5
8 percent, right?

9 A Yes.

10 Q And you took that Holdco discount because, as you say,
11 this is a sum of the parts number, right?

12 A Yes.

13 Q And that's the only reason you apply that 7.5 percent
14 number here, right?

15 A No.

16 Q Is it your testimony that you apply a 7.5 percent
17 discount for any other reason than the fact that it's a sum
18 of the parts number?

19 THE WITNESS: It's not a yes/no answer, Your
20 Honor.

21 THE COURT: Go ahead and explain, Mr. Phillips.

22 THE WITNESS: Sure.

23 BY MS. BRIER:

24 A So a holdco discount is appropriate because it is a sum
25 of the parts. 7.5 percent was the factor I used because

1 that was in my (indiscernible), however you want to
2 characterize my judgement, an appropriate discount factor
3 given the normal range of holdco discounts for the facts and
4 circumstances (indiscernible).

5 Q Now, however you reached the 7.5 percent discount, the
6 only reason you're buying a holdco discount at all is
7 because it's a sum of the parts number, right?

8 A Yes.

9 Q And you also apply a 30 percent discount, correct?

10 A Yes.

11 Q And you apply that 30 percent discount because, as you
12 explain in your declaration, the voting results of the plan
13 result in a 30 percent discount, correct?

14 A Yes.

15 Q You have no other valuation or independent reason to
16 reach that 30 percent number, right?

17 A Correct.

18 Q You pulled it directly out of the plan?

19 A Out of the plan and voting results.

20 Q Correct. And you apply that 30 percent discount across
21 the entire total, that \$1,248 number, correct?

22 A Yes.

23 Q Now, you don't know why --

24 THE COURT: It's billions.

25 MS. BRIER: Yes.

1 THE COURT: \$1,248,000,000.

2 MS. BRIER: Thank you for the clarification, Your
3 Honor.

4 THE COURT: Everything is adding thousands to.

5 MS. BRIER: For purposes of the record, this 1,248
6 number I'm referencing is in millions on this sheet. So I
7 will be more clear next time. Thank you.

8 BY MS. BRIER:

9 Q Now, Mr. Phillips, you don't know why any single
10 creditor voted to elect either liquid crypto or equity,
11 correct?

12 A No.

13 Q But you applied the results of the plan to apply this -
14 -

15 THE COURT: Wait. I think there's an ambiguity.
16 You asked if that's correct and he said no.

17 MS. BRIER: Thank you, Your Honor.

18 BY MS. BRIER:

19 Q You have no knowledge as to why any other creditor
20 voted to select liquid crypto or equity, right?

21 A No.

22 THE COURT: You have to answer the question if you
23 can. No comment is not an --

24 THE WITNESS: I --

25 THE COURT: Yes, no, I don't know. But you can't

1 --

2 THE WITNESS: Your Honor, I said no. I said no
3 twice.

4 BY MS. BRIER:

5 Q So just to be clear, there are other reasons people
6 could have selected liquid crypto or NewCo equity other than
7 a valuation opinion that you offered here, right?

8 A Yes.

9 THE COURT: That was the point.

10 MS. BRIER: Thank you, Your Honor.

11 BY MS. BRIER:

12 Q Now, you apply the 7.5 percent discount and the 30
13 percent discount to the total. You don't make any
14 distinctions among the three component parts, correct?

15 A Correct.

16 Q Now, you would agree with me that the \$450 million
17 number there is liquid cryptocurrency, right?

18 A I don't --

19 THE COURT: You're talking about staking as
20 opposed to value.

21 MS. BRIER: Yes, Your Honor.

22 THE COURT: I want to be sure we have a clear
23 transcript. The \$450 million number is listed for staking
24 of book value. Is that what you're referring to?

25 MS. BRIER: Yes, Your Honor. And at this time, it

1 is liquid cryptocurrency.

2 THE COURT: Yes.

3 BY MS. BRIER:

4 A Yes -- I'm sorry. Was there a question on the floor or
5 not?

6 Q I'll re-ask it. You would agree with me that that \$450
7 million number there is at this moment liquid
8 cryptocurrency, correct?

9 A Yes.

10 Q And you apply the 30 percent discount and the 7.5
11 percent discount to a total that includes it without making
12 any distinction for that number, correct?

13 A Correct.

14 THE COURT: Let me ask you this, Mr. Philips. How
15 did you arrive at the 7.5 percent reduction for conglomerate
16 discount and the 30 percent initial market capitalization?
17 Because you're applying those numbers across the board
18 whether it's staking at book value, which is essentially
19 it's liquid crypto. You're applying those discounts to the
20 full numbers and not simply to particular categories. Why
21 did you do that?

22 THE WITNESS: Yes, Your Honor. I mean, that's the
23 way it's done. There is no holdco/conglomerate discount on
24 each individual part. The holdco conglomerate discount only
25 exists when someone is doing a sum-of-the-parts type

1 valuation, which is what is attempted in the disclosure
2 statement by simply adding the three numbers up, which is
3 what Mr. Campagna testified to in his direct testimony, and
4 that's inappropriate. And so that's why the holdco
5 conglomerate discount is applied at the total because that's
6 the right level (indiscernible) buy it at. And I chose 7.5
7 percent, which is at the lower end of the common range,
8 which usually is either five to 15 percent or five to 20
9 percent because of the similarity of the three types of
10 businesses or operations that are -- or assets that are
11 included in the total enterprise.

12 THE COURT: Did you include -- did you make a
13 comparable company analysis to determine what discount rates
14 you were going to apply?

15 THE WITNESS: Your Honor, comparable company
16 analyses are not usually used in holdco conglomerate
17 discounts. Mr. Kielty --

18 THE COURT: Did you just pick the numbers out of
19 the air if there are no comparable companies that would
20 apply such discounts?

21 The Your Honor, there are numerous studies that
22 establish the holdco conglomerate discounts in the range
23 that I stated of five to 15 percent or five to 20 percent.

24 THE COURT: Go ahead, Ms. Brier.

25 BY MS. BRIER:

1 Q Mr. Phillips, you include the 30 percent discount and
2 the 7.5 percent discount and you add them both together,
3 correct?

4 A Correct.

5 Q And you would agree with me that it's possible that
6 there's overlap between the two, right?

7 A Yes.

8 Q You don't account for that at all, right?

9 A Correct.

10 Q In your view, Mr. Phillips, it's in the best interest
11 of the creditors to confirm this plan, correct?

12 A Subject to the modifications that I have suggested,
13 yes.

14 Q Subject to the limited modifications you suggested, you
15 agree with me that it's in your view that it's in the best
16 interest of creditors to confirm this plan, right?

17 A Yes. I think it's time for everyone to get out of
18 this.

19 Q And you're not offering that it would be better for
20 creditors to enter a Chapter 7 liquidation than it would be
21 to confirm the plan, true?

22 A Correct. And I have not done that analysis, although I
23 did establish on cross that the liquidation value of the
24 mining business was significantly understated and Mr.
25 Campagna admitted it was significantly understated by at

1 least a factor of two.

2 Q So, Mr. Philips, the answer to my question is yes.

3 You're not offering the view that there is a -- that it

4 would be better for creditors to enter a Chapter 7

5 liquidation than confirm the plan, true?

6 A Correct.

7 Q Thank you.

8 MS. BRIER: No further questions, Your Honor. I

9 pass the witness.

10 THE COURT: Any other cross-examination?

11 BY MR. SABIN:

12 Q Good afternoon, Mr. Phillips. Jeff Sabin from Venable.

13 I have four quick questions. One, on what date did you

14 submit your ballot?

15 A Your Honor -- sorry, Mr. Sabin, as I said, I believe

16 that a final ballot was submitted either on the final

17 deadline date, which was September 22nd, or on September

18 21st, the day before.

19 Q And was that before or after you filed your initial

20 plan objection?

21 A I don't remember the exact deadlines for each. I

22 believe it might well have been -- I mean, I just don't

23 remember. If I could look at the filing date, I could tell

24 you the answer to that.

25 Q That's okay. I'm just asking your recollection. My

1 third question is did you read the approved disclosure
2 statement before you voted?

3 A Yes.

4 Q And did you read the ballot and instructions before you
5 voted?

6 A Yes.

7 Q Thank you.

8 THE COURT: All right. Anybody else wish to
9 cross-examine? All right.

10 Mr. Phillips, when I've had a witness testify
11 without counsel, I've usually given them an opportunity to
12 in effect redirect. We don't use the Q&A format. So if
13 there are any evidentiary points that you want to raise in
14 effectively redirect in response to the cross-examination,
15 now would be the time to do it.

16 MR. PHILLIPS: Yes, Your Honor. I think that with
17 respect to the two emails that were introduced -- let me get
18 the right one here. Actually, it was -- I'm sorry, what was
19 the date of the email that had the (indiscernible)? That's
20 the one I wanted to put up. Or if you could re-put that one
21 up. Because the whole spread was on that. And Mr. Weedman
22 used it.

23 THE COURT: I'm trying to see which ones you're
24 referring to. So the ones --

25 MR. PHILLIPS: It's on 9/14.

1 THE COURT: What I have is Celsius Exhibit 118
2 which was the exchange of Twitter messages it looks like.
3 Well, it's up on the screen now. Go ahead.

4 MR. PHILLIPS: Yeah. And if we could magnify that
5 top email there, Your Honor?

6 THE COURT: Exhibit 238.

7 MR. PHILLIPS: Yes, thank you. One of the things
8 that I point out in my rebuttal is essentially what starts
9 here on the second paragraph and which I will read. "I am
10 still waiting for anyone on the UCC side, advisor or member,
11 to explain the observer's duties and responsibilities. The
12 agreement I sought provided no or unspecified compensation
13 and the right for NewCo to sue the observer for any number
14 of reasons. In other words, no upside and high downside.
15 Please articulate to me the observer's duties and
16 responsibilities."

17 So I do think that this is something that has
18 never been responded to by the UCC, yet Mr. Colodny used in
19 his rebuttal to my objection that the statement that the
20 board consist of five prepetition -- significant prepetition
21 creditors which are two board members and three board
22 observers. But the three board observers have no power. So
23 I think that that's something that's very telling.

24 I do think that the orderly winddown scenario
25 needs to be considered much more strongly. I do believe

1 that one of the -- the definition of value -- you can take
2 that down, please.

3 THE COURT: Let's take the email down so Mr.
4 Phillips is on the screen.

5 MR. PHILLIPS: Thank you.

6 THE COURT: Go ahead, Mr. Phillips.

7 MR. PHILLIPS: Thank you. I do believe that the
8 definition of value in any valuation is the price that a
9 willing buyer and seller would agree to in a transaction. I
10 think that the ballot, the weighted distribution election,
11 which had a compelling number of creditors choose more
12 crypto, over \$1.1 billion in claims toggling for more
13 crypto, which is over 25 percent of the actual claims in the
14 case and actually over 80 percent of the people that
15 participated in the toggle by claim value are quite telling
16 as to value. And so the 30 percent discount that I applied
17 to the equity value, the NewCo equity value, is actually
18 understated if anything because it's clear that there wasn't
19 a fair market set at 30 percent. And if you were to go to
20 the disclosure statement, the weighted distribution example
21 table, which was in my exhibits to my declaration I believe
22 and is an excerpt from the disclosure table basically showed
23 that you would get eight percent more value or less value
24 depending on which way you toggle and assumed essentially an
25 equal number claims toggling in each direction. Which

1 clearly wasn't the case once the ballot results came in. So
2 I think that my 30 percent discount is conservative if
3 anything and is higher.

4 And I would point to three specific actions that
5 occurred in the month of September that undercut the value
6 of NewCo stock and contributed to that election being so
7 lopsided.

8 One was the lack of creditor representation on the
9 board, which as Mr. Weedman pointed out (indiscernible) on
10 September 4th posted a disclosure statement but brought in
11 on a Friday night filing that a lot of creditors don't read.
12 And also wasn't distributed in the same way that the
13 disclosure statement was. So that occurred on September
14 4th.

15 Subsequent to that in the next plan supplement,
16 which I think was one or two weeks later, again, on a Friday
17 night, there is the revelation that Fahrenheit had dropped
18 its initial contribution from \$50 million up front to \$33
19 million which undercut the price of the stock out of the
20 gate no doubt because there is less of a stabilization fund
21 available to stabilize the price upon listing.

22 And thirdly, there seemed to be some kind of board
23 twitter war between Mr. Arrington and Mr. Dixon and -- that
24 or -- no, a following, a subsequent plan supplement resigned
25 from the board in a surprise move, Mr. Arrington did. And

1 he is the lead name investor in the Fahrenheit Group.
2 Arrington Capital is the lead investor. Mr. Arrington
3 suddenly resigned from the board and replaced himself with
4 Ravi Kava. I had no objection to him and is certainly well-
5 qualified and well within Fahrenheit's rights to put on the
6 board. But basically said he was doing that because he
7 disagreed with the board observer process and specifically
8 the appointment of Mr. Dixon in a board observer role.

9 And so I believe that those all undercut the stock
10 price significantly and that is why creditors ran and taking
11 more equity. And a 30 percent discount is the minimum
12 discount that should be taken to the NewCo equity in the
13 valuation.

14 THE COURT: All right. Thank you very much, Mr.
15 Phillips.

16 The next person is Mr. Cassidy, Eric Cassidy. Mr.
17 Cassidy, are you on Zoom? No response from Mr. Cassidy.

18 The next is Elizabeth Bohon. Ms. Bohon, are you
19 on? I may be mispronouncing your name, for which I
20 apologize. No response.

21 Travis Keeney? Mr. Keeney, are you on the line,
22 on Zoom?

23 Michael Windham?

24 James Johantgen? J-O-H-A-N-T-G-E-N?

25 May I ask whoever is operating the Zoom -- and I

1 know Deanna has left for the day, but I know somebody is.

2 Are you able to tell whether Ms. Bohan, Mr. Keeney, Mr.

3 Windham, or Mr. Johantgen are still on the Zoom connection?

4 CLERK: Good afternoon, Judge. It's Jessica. No,
5 those entities are not on Zoom.

6 THE COURT: Okay. The next person is Caroline
7 Abruzese, A-B-R-U-Z-E-S-E. Is she on Zoom?

8 CLERK: I do not see her.

9 THE COURT: Okay. Peter Truss? Is Mr. Truss on
10 Zoom?

11 CLERK: I do not see him, either.

12 THE COURT: Benjamin Dame, D-A-M-E?

13 CLERK: I do not see him, either.

14 THE COURT: Okay. Cathy Lau, L-A-U.

15 CLERK: Ms. Lau is on.

16 THE COURT: All right. Mr. Kirsanov, we are back
17 to you. Dimitry Kirsanov. Are you still on the line?

18 MR. KIRSANOV: I am indeed.

19 THE COURT: Okay, Mr. Kirsanov, you are up.

20 MR. KIRSANOV: Thank you, Your Honor, for hearing
21 my concerns.

22 So my concerns primarily revolve around best
23 interests and fair and equitable clauses and the mixed
24 language in the plan along with the concerns of CEL token
25 and other cryptocurrency in the custody class. And the

1 language of deactivation they value, not providing
2 guaranteed value returned in comparison to a Chapter 7
3 liquidation.

4 From my understanding, all distribution methods
5 from effective date to deactivation day are to follow best
6 interests. On the plan under CEL token settlement in the
7 plan, Docket 3332 on Page 116, it indicates that all CEL
8 token deposit claims other than custody claims that are CEL
9 token deposit claims shall be valued at 25 cents.

10 However, on the debtor's balloting, the custody
11 class was assigned 25 cent valuation for cell tokens in the
12 custody class. And I do want to note that the custody class
13 in the CEL monetary majority voted to reject the CEL
14 settlement plan.

15 In my particular situation, I had pure custody
16 assets that were not able to be withdrawn pursuant to the
17 withdrawal order as a result of having a (indiscernible).
18 This resulted in my pure custody assets moved into 6A from
19 the 6B class as I -- and I was able to reject the proposed
20 CEL custody settlement in the custody class by a monetary
21 majority after initially accepting the custody settlement as
22 a result.

23 This was never explained in explicit listing or
24 ballot instructions or otherwise. From my understanding
25 maybe a double-digit number of people in the world that

1 could do this. But I fell under that category. So the
2 settlement, the custody settlement calls for the debtor if
3 they cannot satisfy in-kind distributions during the trustee
4 phase and the debtor has confirmed they are not able to
5 distribute any other cryptocurrency aside from bitcoin or
6 Ethereum in Hawaii in that phase, that the conversion rate
7 shall be determined using the value of the original digital
8 asset of petition date in U.S. dollars and will be converted
9 into an (indiscernible) cryptocurrency based on the value of
10 such digital asset on the date of entry of the settlement
11 approval order.

12 In the CEL token hearing of September 28th which
13 was a day after the final amendment of the plan, the
14 debtor's counsel indicated that this was an excellent
15 question and they had not thought of that scenario.

16 In addition, I do believe the deactivation day
17 language indicates that a creditor may receive less than
18 their Chapter 7 liquidation value. It is reasonable to
19 assume that many people have moved on from Celsius and will
20 simply receive a check in the mail from the trustee with the
21 activation day value.

22 While most cryptocurrencies have indeed risen in
23 value, there are some that have fallen in value on petition
24 date. And I believe the Debtor must follow the best
25 interest in that case, providing equal or greater value to

1 the cryptocurrency as of that petition date.

2 The Debtor has indicated they want to use market
3 rates, which do not always reflect liquidation values of the
4 assets that have fallen in value since petition date. My
5 interpretation of the change after balloting on the 27th
6 stem from the fact that the debtor wishes to assign a value
7 of 25 cents to the CEL token in custody class, which in my
8 opinion is not fair and equitable in terms of liquidation
9 rates in comparison to other classes.

10 Custody is targeted with the most monetary loss as
11 a result. I do believe that this violates Bankruptcy Code
12 1127 and Bankruptcy Rule 3019. My stance is that CEL should
13 be assigned a liquidation value across its respective
14 classes. For the CEL token in pure custody, that's 100
15 percent liquidation value of petition day prices. The value
16 returned in that case must be equal to 81 cents.

17 For CEL general custody at a 72.5 liquidation
18 rate, the value returned must be equal or to at least 59
19 cents. For CEL in general Earn, which has a 47.4 percent
20 liquidation rate of a Chapter 7, the value returned must be
21 equal or greater than 38 cents.

22 And my concerns is this does not meet the best
23 interest of a creditor like myself. My claim, my dollarized
24 claim on CEL token is \$600,000. And I believe the Debtor
25 tries to mitigate that petition date value down to under

1 \$200,000. And this monetary loss is not fair and equitable
2 to me in comparison to other classes. And therefore I
3 reject the plan.

4 You know, I do want to mention since becoming a
5 vocal dissenting member, I've been the subject of
6 harassment, intimidation, and threats. And I don't think
7 that's appropriate at all. You know, my objective is to get
8 through this Chapter 11 in a fast process so we can all
9 maximize our value. But these specific concerns, I have
10 been getting vague responses on. Nobody has given me my
11 direct options on this. This wasn't even explained on the
12 balloting, Your Honor. And the debtor's counsel even said
13 that was a great question and they didn't even think of
14 that. So, you know, I would like a clarification on that.

15 I would also like to update the Court in regards
16 to a criminal matter from the FTX and Alameda case. And I
17 submitted this on the docket today, Your Honor. I did
18 submit a formal transcript. The CEO of Alameda Research,
19 Caroline Ellison, who has agreed on a plea deal with
20 prosecutors to testify against FTX, last Wednesday, Ms.
21 Ellison testified that her and Mr. Bankman-Fried the CEO of
22 FTX, were considering selling billions of dollars-worth of
23 bitcoin if it was ever above \$20,000. I believe this
24 presents potential challenges to any valuation arguments and
25 presents challenges to valuation concerns on all assets

1 (indiscernible), especially if a competitor was conspiring
2 to suppress the price of bitcoin.

3 So, Your Honor, those are my concerns today. And
4 I appreciate the Court's time in hearing my objections and
5 concerns.

6 THE COURT: All right. I think, Mr. Kirsanov, you
7 previously raised issues about those with custody. And I
8 believe that the Debtor's counsel words to effect that it
9 was a good question and that it clearly -- it doesn't go to
10 the evidence that's been admitted, but it is clearly going
11 to go to final arguments that have to be made. So I'm not
12 going to ask Debtor's counsel to respond today. But it's
13 something -- and Mr. Kirsanov, when we get to the closing
14 argument, you'll have a chance to raise it again. I think
15 because this is the second time, you laid it out in more
16 detail today. And I'm sure the Debtor's counsel is going to
17 want to respond.

18 I think the one point, if I'm understanding what
19 you said that I'm going to push back on -- and I'm not
20 deciding the evidence at this point. There's no witness who
21 has testified that CEL should be valued at 81 cents at the
22 petition date. There's been a variety of testimony from --
23 at the petition date, it was really worthless because it was
24 a utility token and had no utility. Or if it did, it was
25 purely speculative whether there was going to be a

1 reorganization possible where the CEL token would have any
2 utility going forward. So zero at the low end. No one,
3 including in the cross-examination today, there is no one
4 who said it's 81 cents. So we'll have to see. This will be
5 for legal argument.

6 MR. KIRSANOV: If I may respond to that, Your
7 Honor?

8 THE COURT: Briefly.

9 MR. KIRSANOV: With regard to the most recent
10 testimony by Ms. Ellison from Alameda Research, I do believe
11 it is perhaps even a conflict of interest in the expert
12 witness who will have admitted to receiving seed funding
13 from Alameda research. And now if Alameda research and FTX
14 were indeed conspiring to keep the price of bitcoin
15 suppressed under \$20,000, this prevents -- excuse me, this
16 presents substantial issues on general valuation not only on
17 the CEL token, but across all other petition date values.

18 THE COURT: All right. So I'm going to stop that
19 testimony. I'm going to stop those arguments for now.

20 We have one other witness that we moved to the
21 end, and that's Mr. Schneider. Do you wish to be heard
22 today? It was David Schneider. He originally was number 12
23 on the list. And at his request, I moved him to the last
24 for today.

25 MR. SCHNEIDER: Yes.

1 THE COURT: Go ahead, Mr. Schneider.

2 MR. SCHNEIDER: Okay. Can you hear me fine, Your
3 Honor?

4 THE COURT: Yes, I can. Go ahead.

5 MR. SCHNEIDER: Okay. Yeah, I would prefer to be
6 heard tomorrow. I've been up all night for the past 24
7 hours working on this. I am definitely inexperienced at
8 what -- where I'm at here today. And I need a little bit
9 more time to be able to be prepared.

10 THE COURT: What is it that you're preparing, Mr.
11 Schneider?

12 MR. SCHNEIDER: To be honest, I'm not exactly sure
13 exactly the intent and purpose of this hearing here today.
14 I know I submitted my exhibits and I'm basically preparing a
15 statement of verbalizing how the exhibits fit in with my
16 objections. And I'm not there yet, Your Honor.

17 THE COURT: Okay. Why don't you hold off for a
18 second. So let me ask the debtors then. So the objectors
19 are seeking to call an additional expert witness.

20 MR. MCCARRICK: Yes, Your Honor. We're happy to -
21 -

22 THE COURT: Make your appearance.

23 MR. MCCARRICK: Sorry. Every time.

24 THE COURT: Every time.

25 MR. MCCARRICK: T.J. McCarrick, Kirkland & Ellis,

1 on behalf of the Debtors. We're happy to push forward
2 tonight to the extent the witness is available. If you'd
3 like to proceed tomorrow with remote testimony, we're happy
4 to do that.

5 THE COURT: I think I would like to proceed
6 tomorrow with remote testimony.

7 MR. MCCARRICK: And in fairness, I would like
8 that, too. There have been some new underlying materials I
9 understand have been posted on Twitter from the expert. So
10 I'll spend the evening with those and we can --

11 THE COURT: All right. So let me understand. I
12 am prepared to allow Mr. Schneider to go in the morning as
13 well to give him some more time. I hope you're not going to
14 spend another sleepless night, Mr. Schneider, but I will
15 wait to give you a chance to speak tomorrow morning, okay?

16 MR. SCHNEIDER: Okay. Thank you, Your Honor. I
17 appreciate it very much.

18 THE COURT: Let's deal with -- I guess I have a
19 couple of questions. So who is the expert and who is
20 calling him?

21 MR. MCCARRICK: Mr. Faraj. There's been a number
22 of letters on the docket, but Mr. Davis identified Mr. Faraj
23 on his witness list. So I think technically Mr. Davis would
24 be the sponsoring --

25 THE COURT: Okay. Have you deposed Mr. Faraj?

1 MR. MCCARRICK: We have.

2 THE COURT: Okay. So the only witnesses as of now
3 for the objectors to listen to would be Mr. Faraj and Mr.
4 Schneider.

5 MR. MCCARRICK: Correct. And my understanding
6 just as to Mr. Schneider is that he did not submit any
7 written testimony.

8 THE COURT: Correct.

9 MR. MCCARRICK: He had certain exhibits listed,
10 which we can discuss. But yes.

11 THE COURT: Correct.

12 UNIDENTIFIED SPEAKER: Your Honor, Ms. Lau raised
13 her hand.

14 THE COURT: Yeah. We're going to finish with Ms.
15 Lau this afternoon before we finish.

16 Does the Debtors or the Committee plan to call any
17 rebuttal witnesses?

18 MR. MCCARRICK: Speaking for the Debtors, not at
19 this time, Your Honor.

20 THE COURT: I don't know what time you're thinking
21 about.

22 MR. MCCARRICK: No, I understand. I would be
23 surprised if we had to haul someone in here tomorrow.

24 THE COURT: Okay. Let me hear from the Committee.

25 UNIDENTIFIED SPEAKER: We're in the same

1 situation, Your Honor.

2 THE COURT: Okay. So, Ms. Lau, I'm going to go
3 ahead and listen to you. I called you earlier. I don't
4 know whether you had dropped off and signed back on, but you
5 were on the list. So go ahead, Ms. Lau. Go ahead, Ms. Lau.

6 MS. LAU: Can you hear me?

7 THE COURT: Yes, I can hear you.

8 MS. LAU: Okay. Sorry. I had to hook up an
9 external microphone. This is like -- I didn't know if it
10 works.

11 THE COURT: Okay.

12 MS. LAU: I wasn't aware that I was supposed to be
13 here, but I can, like, voice my objections, the ones that I
14 wrote down before. Because I do have everything.

15 THE COURT: Well, let me ask you this. If there's
16 anything you want to add to your written objections, now
17 would be the time to do it.

18 So the Court entered an order on October 13th and
19 it provided the list and the order that I was going to hear
20 the objectors. And you were listed as number 22 on the
21 list. So it's okay. It's okay. I'm listening to you now.

22 In your written objection, you don't have to just
23 repeat what's there, but I'm going to give you a chance to
24 speak if you wish to.

25 MS. LAU: Can I say what was in there and then

1 also maybe add? Or do you just want me to say if I have
2 anything new.

3 THE COURT: We have the written objection. I'm
4 not -- I want to give you a chance to say what you want to
5 say. Okay? So go ahead.

6 MS. LAU: I guess my feelings towards, like, what
7 I felt was based on the disclosure statement. Because I
8 really felt like it made all these -- it took all these
9 liberties that I don't feel were really there. Like, I
10 thought that, like, for example, I'm in my very first
11 objection, like you already ruled, but we were supposed to
12 get our Flare tokens back. And then they said they're not
13 going to give us the Flare tokens back because, like,
14 Celsius didn't have a custody account at the time. And,
15 like, I've never had a custody account because I'm Canadian.
16 Canadians don't even have custody accounts. And we've been
17 waiting since 2020 to get those. So I was like, how could
18 you just say we're not going to give you back just because
19 there were no custody accounts?

20 And, like, a lot of the rulings I felt like didn't
21 take into account a lot of -- like even how they said that
22 everybody -- that because so many people voted in favor of
23 the Celsius plan that Celsius creditor -- like all the
24 people who have Celsius actually agreed to the valuation of
25 Celsius. I really wanted to stress that I don't think that

1 that's true. I already know another creditor who only voted
2 that way because she wanted to get some money back from the
3 claim. And even though she has CEL token, she's like, well,
4 what can I do. If I don't vote yes, I don't any money. And
5 that doesn't reflect the fact that we're like, yes, we're
6 fine with you valuing 25 cents.

7 Like I said in my letter, I took out a line of
8 credit just to buy some CEL token. And some of it was even
9 for, like, four dollars. And I think that it's crazy that
10 regardless -- I realize that everyone's trying to value CEL
11 and see what price it was at the time, but I think it's
12 ridiculous if we get nothing back.

13 Like, I feel -- from what I understand, Alex
14 Mashinsky and all the other people aren't even getting any
15 value for their CEL. But I don't -- if they're not going to
16 get anything for their CEL, why is it that everyone who
17 bought CEL has to suffer? Because so many people are mad at
18 Alex and all the people for, like, manipulating the price of
19 Celsius. We bought CEL token at certain prices. And now
20 because so many people are, like, Celsius is stupid, Celsius
21 did this and that and that, then we can't get anything what
22 we purchased because of all these negative feelings towards
23 Celsius people. I feel like it should at least be taken
24 into account that there was a lot of us that bought Celsius,
25 and we bought it for certain prices, like a lot higher than

1 this 25 cents or 20 cents and all those prices that they got
2 to buy it for. And now we have to worry about not even
3 getting anything for it or getting like 20 cents or 25
4 cents. Like I said, I took out one line of credit just to
5 buy it for 40 cents and another just to buy it for like four
6 dollars. So I already had \$10,000 invested in Celsius. And
7 I feel like everybody just being like we shouldn't get
8 anything because Celsius is, like, this, that and another.
9 Like that we all bought it thinking that it had value, and
10 it should. And it's not like it didn't have any value.
11 Like somebody mentioned, there's still a market cap for it.
12 So I don't understand why there's this big argument that we
13 should just get nothing for it.

14 And I know it's probably too late to talk about
15 this, but I thought it was really unfair how they forced us
16 to, like, just accept our coins in terms of bitcoin and in
17 Ethereum. It's like I have 36 coins and then my taxes are
18 going to be ridiculous now because they're selling all my
19 coins without me getting a say in it. And just so that the
20 people who kept lots of bitcoin because from my
21 understanding, a lot of the creditors that have big holdings
22 have, like, mostly just bitcoin and Ethereum. So it all
23 helps them. And then they get what they want. But all
24 these little guys like me who only buys -- who have, like,
25 smaller holdings. But we have many coins. Now we lose all

1 the work we put into, like, getting each one of those --
2 every one of those coins. Like, we have to research a lot
3 to find out which coins we want to buy. We have to, like,
4 try to buy them at good prices all the time. It's really
5 difficult. There was so much work into going into that.
6 And I thought that it was really unfair that people just --
7 just because the biggest creditors have bitcoin and
8 Ethereum, we all just lose all the work we put in just
9 because that satisfies them.

10 I put in my -- I submitted evidence. I didn't
11 know after the fact with the letter. And I showed that one
12 of the articles was showing that (indiscernible) of Celsius
13 -- of the (indiscernible) in Celsius (indiscernible). I
14 think it said like sixth-something percent (indiscernible)
15 coin. And they lost the coin that they had, but it's not
16 like they lost the coins that we bought. But because so
17 many people are invested in bitcoin, now it feels like we
18 just get -- we have to go along with whatever everybody else
19 does. I just didn't think that was fair.

20 And I wrote for number four inappropriate
21 allocation of \$2.6 million of accountholder funds to the
22 emergence incentive plan awards. I know that's been
23 addressed a number of times. And I know that people have
24 come on here saying that, oh, this is normal that -- but I
25 already feel like they're already getting paid so much money

1 from creditor money. And then it already said somewhere
2 later, like in the plan way later that NewCo, they were
3 going to get -- they were going to have penalties instead of
4 incentives for, like, if they don't meet quota. And I don't
5 understand why. Like, I think that would motivate someone
6 just as much to have a penalty if they didn't meet what they
7 were supposed to do than, like, an incentive.

8 And I said there was too much freedom for plan
9 creators to use the plan after the fact with no limitations
10 and no requirements to stick to what was already put forth
11 (indiscernible). I just thought it was crazy that they
12 have, like, potential exists for inaccuracies and the
13 Debtors have no duty to update. They're basically saying
14 that we could put something completely wrong here and we
15 don't have to tell you and we can change it. And as long as
16 you, the judge, doesn't tell them you have to inform
17 everybody that you've made an update or changed something,
18 they can get away with changing the plan as much as they
19 want. And the fact that they added two NewCo members
20 without telling anybody even though that's going to require
21 so much Celsius creditor money, I felt like that was really
22 unfair. That's a huge deal. Like, how much is it going to
23 cost to pay for two more people? Plus, they're people from
24 the NewCo board. They're not even Celsius creditors. So it
25 just felt to me like how do you know that they're not just

1 voting for each other and promising each other I'll vote for
2 you here if you vote for me here so then we can all get
3 seats. And then we don't even get a say because we're
4 creditors. From my understanding, people from the committee
5 of creditors, they have seats on the litigation committee,
6 (indiscernible) board and all these different committees.
7 And some of them you get to vote on. And how do we know
8 that they're not voting for each other so that they can stay
9 on and make even more money after this while we still get
10 less money and less money and less money because they keep
11 creating these positions that we are funding from our money.

12 And then I said it was unfair protection of plan
13 creators from litigation because I was saying that if these
14 people are really taking advantage of the fact that there's
15 all these holes where they can add what they want and then
16 change so many things whenever they want, now we're not even
17 allowed to complain about it because we're not allowed to
18 litigate against them because we were forced to sign and we
19 were forced to opt out of the third-party release if we
20 wanted (indiscernible) of this plan. I thought that it was
21 really unfair that if you want to accept the plan, even if
22 you say I opt out of the third-party release, you still get
23 opted in regardless so then you can't do anything about it.

24 And then later I said overly narrow scope of plans
25 for litigation, administrators appearing confined to

1 pursuing litigation against former debtors with no
2 indication of a plan to go after potentially bigger fish.
3 I'm not sure if they already were planning to go after FTX,
4 because I know there was a claim that was, like, Celsius
5 filed a \$2 billion claim against FTX. But when I read the
6 (indiscernible) last year (indiscernible) everybody hates
7 now because they, like, ran off with creditor money, but
8 they're not going after this big fish that has, like, a \$2
9 billion claim. Where if they go after them, then we could
10 all get back \$2 billion. And then that's going to be so
11 much more money for creditors.

12 I know that it said that they're not necessarily -
13 - they don't have to name everybody they're going after, but
14 I thought it was very concerning that they don't list
15 something huge like that. Because we could get so much more
16 money if they actually pursued that and if they actually
17 made that a focus rather than just focusing every -- all
18 their energy Alex, Alex, Alex. Like --

19 THE COURT: Ms. Lau, I'm going to -- because I
20 think I have your arguments down. And there will be closing
21 argument in the case. Let me raise -- thank you very much,
22 Ms. Lau, for your participation.

23 Let me ask a couple of things with respect to Mr.
24 Blonstein's deposition, has that been set at this point?

25 MS. BRIER: Your Honor, Grace Brier, Kirkland &

1 Ellis on behalf of Debtors. I don't know that we have an
2 official time set, but we will get confirmation as soon as
3 we have it.

4 THE COURT: Okay. Here's what I would like to do.
5 We've got Mr. Faraj should be available to -- where is he?
6 I don't know where --

7 MS. BRIER: Australia.

8 THE COURT: Sydney, Australia. Nine a.m. tomorrow
9 morning he has to be available for examination in court. My
10 plan is -- and Mr. Schneider will have his opportunity. I'm
11 going to give Mr. Schneider -- Mr. Schneider, I'm going to
12 give you a chance to speak first right at 9:00 tomorrow
13 morning. All right? And then we'll deal with Mr. Faraj.

14 I plan to recess this hearing tomorrow no later
15 than 12:30. We can talk about a schedule for closing
16 statements in any post-trial briefs. The opening briefs
17 were quite comprehensive. I think they may need -- they may
18 have some additional arguments in light of how the evidence
19 has come in.

20 I don't know what your schedule is for when you
21 expect to have transcripts, when they'll be posted. Others
22 would have an opportunity as well to file briefs. So we
23 ought to do that tomorrow.

24 Is there any reason that anybody expects the
25 testimony to go beyond tomorrow morning?

1 MS. BRIER: None from Debtors, Your Honor, other
2 than Mr. Blonstein's deposition.

3 THE COURT: Right. So, look, I would hope that
4 that could be done -- if necessary, we could resume the
5 hearing on Wednesday morning just with respect to Mr.
6 Blonstein.

7 MS. BRIER: Understood, Your Honor. We'll have an
8 update for the Court right when we start tomorrow as to when
9 that's scheduled. And we'll endeavor to get that done
10 tomorrow.

11 THE COURT: All right. So one of my law clerks
12 just handed me a note. Mr. Kirsanov, you wanted to say
13 something?

14 MR. KIRSANOV: Yes, sir. May I ask a procedural
15 question?

16 THE COURT: Go ahead.

17 MR. KIRSANOV: Does the Court have jurisdiction
18 over the claim of breach of contract before a petition date
19 and before the freeze?

20 THE COURT: Prepetition claims are definitely part
21 of this Court's jurisdiction to deal with. That would have
22 to be included in -- and that had to be -- any breach of
23 contract claim had to be asserted and a proof of claim filed
24 with the Court by the bar date. There certainly have been
25 breach of contract claims that have been asserted, but the

1 bar date has come and gone a long time ago.

2 MR. KIRSANOV: Yes, sir. And in regards to a
3 breach of settlement, is that something that the Court has
4 jurisdiction over the custody settlement?

5 THE COURT: I'm sorry, I didn't understand the
6 beginning of your question, Mr. Kirsanov.

7 MR. KIRSANOV: With regards to breach of
8 settlement and the custody settlement, the first payout,
9 does the Court also have jurisdiction over that?

10 MR. KOENIG: Your Honor, Chris Koenig for the
11 Debtors. I think what Mr. Kirsanov is asking is do you have
12 jurisdiction -- he signed the custody settlement. I think
13 he is alleging that we violated the custody settlement. I
14 think he's asking --

15 THE COURT: I certainly have jurisdiction over
16 that issue.

17 MR. KOENIG: Yes.

18 THE COURT: Okay. And the other thing is, Mr.
19 Davis, I've been advised that you also wanted to say
20 something before we end for the day.

21 MR. DAVIS: Yes I do, Judge. Your Honor, I would
22 just once again ask the UCC and the Debtors to turn over all
23 the FTX data they received through the subpoena that you
24 issued.

25 THE COURT: Overruled. I mean sustained --

1 objection. There's an objection. It's sustained.

2 MR. MCCARRICK: Objection, Your Honor. T.J.
3 McCarrick, Kirkland & Ellis, on behalf of the Debtors.

4 THE COURT: Yes.

5 MR. MCCARRICK: I would just note that the
6 discovery deadline for opposition of confirmation --

7 THE COURT: Has come and gone. Come and gone.
8 All right.

9 So that finishes our hearing for today. I'll see
10 you all at 9:00 tomorrow morning. You can leave anything in
11 the courtroom. The courtroom is going to be locked up.
12 Okay? Thanks very much. See you all tomorrow.

13 MR. DAVIS: Judge, tomorrow --

14 THE COURT: No, Mr. Davis. Enough. Enough. See
15 you all -- if you log in tomorrow, we'll have a hearing
16 tomorrow morning. Court is adjourned. Thank you.

17 (Whereupon these proceedings were concluded at
18 5:39 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date:

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[admit - answer]

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[answer - asked]

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